ABSTRACT

BEYOND BRANCH: AN EXAMINATION OF THE AMERICAN PRESIDENCY AND CONSCRIPTION POLICIES

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Despite its unpopularity when used during the American Civil War, conscription was used during World War I, World War II, the Korean War, and the Vietnam War. Conscription, mandatory military service, required America’s male population to be registered and serve the nation. These men, between the ages of eighteen and forty-five, fought in these declared and undeclared wars. Conscription laws lapsed, which drastically reduced the size of the military. Members of Congress enacted legislation to initiate new conscription calls to serve the military needs of the nation. President Abraham Lincoln, President Woodrow Wilson, President Franklin Delano Roosevelt, President Harry S. Truman, President Lyndon Baines Johnson were president when conscription bills were passed by the Congress. Each of these presidents signed the bills into law. While the presidents had not taken an active role regarding the passage of the bill, the bills were signed into law.

This project examines the role of the presidents as they delivered proclamations or issued executive orders regarding conscription. Some presidents, however, have been noticeable silent during their terms in office. Presidents verbally encouraged compliance among eligible men and other Americans. These statements often contained strong language that linked compliance to patriotism and a requirement of duty. Other presidents made statements that addressed the fairness of the system while they expressed their intent to improve conscription. Presidents also
made statements related to clemency or pardoning of violators. These sources expose the role of the American presidency to elicit support for conscription or empathy for violators. Conscription is an interesting case study to examine amid the theories of critical juncture, path dependency, power of the president, unilateral action, and the Two Presidencies Thesis. In a departure with the militia system, the implementation of federal conscription signifies a critical juncture. In creating this new system, Congress passed legislation to directly conscript men into the United States military. The theories of unilateral action should not be broadly used to explain the actions of all presidents at the time of an active draft. There are, however, few instances in which presidents took unilateral action in regard to conscription. Presidents have followed the action of Congress to draft and pass bills regarding conscription. The Two Presidencies Thesis has been used to explain the deference of Congress to presidents in matters of foreign policy, but conscription remains an example of Congress leading the action. While there are some noted exceptions (such as President Richard Nixon, President Gerald Ford, and President James Carter), presidents have mostly followed Congress rather than take an outward stance regarding conscription.
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BEYOND BRANCH: AN EXAMINATION OF
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BY

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INTRODUCTION

Conscription, the requirement of mandatory military service, was used during different periods of American history.\(^1\) At various times, between 1863 and 1973, conscription quickly amassed a large military. This study exposes the changes during this timeframe as an exploration of the actions by Congress as it emphasizes the role of the president. While conscription remained unpopular following its use during the American Civil War, conscription remained as a consistent military policy during World War I, World War II, the Korean War, and the Vietnam War. Following American involvement in a conflict, the United States military reduced in size. Conscription was then regularly used to quickly muster, train, and assemble men for military service in periods of declared war, undeclared war, and during times of peace. The president and Congress share distinct powers regarding the military. These branches, as demonstrated, serve distinct roles regarding conscription. In following the precedent set during the American Civil War, the Congress continued to pass conscription legislation and the president signed these bills into law. Presidents followed these actions of Congress as they refrained from active involvement of the passage of these bills. Additionally, they did not issue proclamations or executive orders until after the bills passed in the Congress. With the exceptions of President Richard Nixon’s call to end conscription and President James Carter’s call to reinstate registration, presidents mainly followed the Congress. When they issued

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1 Conscription is defined as mandatory military service in the United States military between 1863 and 1973. It is more commonly, and recently, referred to as “the draft.” For the sake of formality and consistency, the term “conscription” will be used throughout this text.
proclamations and executive orders, they pled for compliance and highlighted punishments for disobedience.

Before the use of federal conscription, the states’ militias were deployed and federalized for both defensive and offensive purposes. The earliest use of the states’ militia, before the American Civil War and the advent of federal conscription, rested with the Congress. The United States Constitution details the use of state militia forces within Article I and II since the legislative and executive branches have been given different duties and responsibilities over the militia forces. These different duties range from the summoning of troops, creation of laws regarding militia forces, and being the commander in chief of militia forces. Congress, as noted in Article I, Section 8, have the authority to declare war and raise armies for the defense of the United States. Article I, Section 8 grants Congress the right “to provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions.”2 Article I, Section 8 further provides the Congress the power “to provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.”3

The president, therefore, has been given different duties regarding militia forces. The raising, arming, and training of the states’ militias, as detailed in Article I, Section 8, is vested with the powers of the Congress. Once troops enlist into the military, the president then controls these troops according to the powers provided to the president. The president, according to Article II, Section 2, “shall be commander in chief of the Army and Navy of the United States,

2 U.S. Const., Art. I, Sec. 8.  
3 U.S. Const., Art. I, Sec. 8.
and of the militia of the several states, when called into the actual service of the United States.\textsuperscript{4}

The military represents an interesting case to examine since these two branches have distinct responsibilities regarding the military. These separate duties and responsibilities, having been created as a form of checks and balances, separate these distinct duties over the military. Before the American Civil War, these separate duties fostered a further delay before troops could be used in the absence of a formal declaration to federalize troops or in advance of a formal declaration of war.\textsuperscript{5}

Conscription laws lapsed following a war’s conclusion or within a given period as designated by Congress. Decades after the conclusion of the American Civil War, as tensions mounted and President Woodrow Wilson weighed the cost of intervention into World War I, the Congress voted upon the Selective Service Act. This act bore similarities to the American Civil War’s Enrollment Act. Republican Representative Julius Kahn introduced the Selective Service Act to implement a conscription call. President Wilson supported the measure, and signed the bill into law on May 18, 1917. This act, altered based upon suggestions from the organizer of the Union’s conscription law as used during the American Civil War, created a new system of mandatory military service. One significant change to conscription was self-registration since it placed the responsibility directly upon males to register and comply with the new law. Following this conflict, much like the end of the American Civil War, the conscription law expired. Decades later, as American government leaders watched Europe erupt into another

\textsuperscript{4} U.S. Const., Art. II, Sec. 2.

\textsuperscript{5} Lois G. Schwoerer (1974) detailed the reasons for these distinctions and the use of militia forces. In this view, the framers were aware of the British militia tradition and the Militia Ordinance. The Militia Ordinance in Great Britain separated the powers of militia use between the sovereign and Parliament. Schwoerer explains, “The idea that the legislature rather than the executive should have ultimate control over the armed force of the nation became a central element in all future arguments” (Schwoerer 1974, 50).
conflict, Democratic Senator Edward Burke and Republican Senator James Wadsworth introduced the Selective Training and Service Act of 1940. President Franklin Roosevelt ushered in a significant change when he signed America’s first peacetime conscription law in September 1940. This conscription law was then used to muster men into service once the United States officially entered World War II on December 8, 1941. Unlike earlier periods, registration and a peacetime draft became a standard practice.

New conscription laws were passed in 1948 and 1967. Years following World War II’s conclusion, Republican Senator Robert Taft and Republican Senator Charles Elston introduced the Military Service Act (also called the Selective Service Act of 1948). This act increased the size of the standing military in the United States following the post-war demobilization. The Military Service Act also created a system of reserves. President Harry Truman signed the bill into law on June 24, 1948. Decades later, with the pending expiration of Selective Service in 1967, Democratic Senator Edward M. Kennedy, Democratic Senator Joseph S. Clark, and General Mark W. Clark proposed amendments and an extension of conscription. President Lyndon Johnson signed this law on June 30, 1967. Each time the law became more clear and explicit to detail the selected men that were eligible for deferments as deferments were also changed and altered during this period. President Richard Nixon, a supporter of the All Volunteer Force, ushered in a significant change with the lottery system in 1969. Fairness, always a contentious aspect of conscription law, became paramount for legislators. Despite his call to end conscription, Nixon called for the Congress to extend conscription for two years when

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6 Deferments served as a means to determine the eligibility of men for service. Deferments were available for the men that worked in certain industries, for those with health issues or ailments, those with dependents, and for college students (either undergraduate or graduate).
it expired in 1971. The active draft ended in 1973, with the expiration of the extension during Nixon’s presidency, and President Gerald Ford ended registration in 1975. This end to registration was short-lived, however, since President James Carter called to resume registration in 1980 following the Soviet Union’s invasion into Afghanistan.

Conscription was implemented as a satisfactory means of manpower procurement, and these two branches of government had different roles in protecting this government policy. The growth and power of the federal state (since the American Civil War) also influenced the acceptance of conscription among members of both political parties. In various periods of American history, the Congress implemented new laws regarding conscription while the presidents signed these bills. These branches, given separate powers within the Constitution, served different roles regarding conscription.

Throughout its use in American history, presidents have given proclamations or issued executive orders regarding conscription. Some presidents, however, have been noticeably silent during their terms in office. Presidents made statements to plea for compliance among eligible men and other Americans. These statements often contain strong language that linked compliance to patriotism and duty. Other presidents made statements regarding the fairness of the system while they expressed their efforts to improve conscription. Presidents also made statements related to clemency or intended pardon of violators. The scope of proclamations and executive orders range based upon the period and in relation to the American public’s attitudes regarding conscription or violations. These sources expose the role of the American presidency to elicit support for conscription or even empathy for violators.
REVIEW OF LITERATURE

Scholars focus upon many important issues related to the use of conscription and the actions of presidents. These scholars touch upon the changes in American society following the implementation of a federal form of conscription, efforts to instill obedience to conscription, and support of conscription over time in the United States. These studies provide rich insight to the consequences to this shift in American military policy while it also exposes the efforts to ensure adherence to the new law. Other bodies of literature address the role of the president, the reasons for their course of action, and the tools of the presidency. This literature illustrates the role of the president to offer support for policies, their ability to use tools to work with other branches of government, and even their power to act unilaterally. This literature further exposes the importance of the president within the federal government when assessing factors of public opinion, image, and popularity. This literature further shows the importance of individual presidents, the given time period under examination, the president’s role amid foreign policy, and the purposeful efforts to engage with the American public for support.

Conscription

Literature regarding the operation of conscription is limited. This literature addresses several main themes. This literature focuses upon changes in society following the implementation of conscription, efforts to silence dissent against conscription, decline of support for conscription when used for foreign wars, and the government’s response once conscription
was implemented through history. In total, these scholars focus on the consequences of this new military policy upon the American public and efforts by government leaders as this military policy remained an unpopular military policy. While most of these pieces of scholarship is period specific to a single American conflict, it does expose overarching issues over a period of time.

Eugene Murdock (1971) contributes the most comprehensive account of conscription during the American Civil War, but Murdock’s work focuses upon those that resisted against conscription rather than address the federal government’s actions to implement and uphold this military policy. Margaret Levi (1997) addresses the changes upon and within American society after the introduction of conscription since this policy created a new sense of service to the state. As Levi shows, the acceptance of conscription among the American populace is reliant among men understanding they have a requirement of service. In a similar study, Ralph Young (2008) addresses the American government’s efforts to use propaganda as a means to convince Americans of the necessity of conscription. Like Levi, Young also addresses this changing understanding of the responsibility and requirement of service to the state. Timothy Perri (2013) surveys American history to describe the periods when conscription was used to note similarities among different periods since the use of conscription shows changes in American society to require male citizens to serve the federal state (Perri 2013, 437).

Scholars also address the consequences of implementing conscription. Allan R. Millett and Peter Maslowski (2012) survey American history from before the American Revolution to the present day to show the ramifications of conscription since conscription caused divisions within American society (Millett and Maslowski 2012, 82). In a similar approach, Richard
Leone and Greg Anrig (2003) highlight factions within American society to expose the interplay of work among the FBI (Federal Bureau of Investigation), the CIA (Central Intelligence Agency), United States military, and local police forces to change and inform American attitudes regarding mandatory military service. These studies provide insight into American society as they expose fundamental changes to American attitudes regarding military service and service to the federal state. In a related and relevant study, Antonis Adam (2012) evaluates the ways that “unstable democratic institutions employ military conscription as a mechanism to control the military and to prevent its involvement in a successful coup” (Adam 2012, 715). While this study is outside of the United States, it illustrates other intentional uses of conscription and the efforts to inform military policy as a method of control.

Other scholars address the silence of dissent of anti-conscription protest. Robert E. Cushman (1956) notes the limitations placed upon anti-war or anti-conscription speech since these restrictions did not abruptly end once the conflict ended. Peter Irons (2000) focuses upon the language of the United States Constitution to examine First Amendment protections and restricted during times of war. Irons questions if the First Amendment was intended to be limited during times of war and national emergency. Joan Jevsen (1999) focuses on instances of dissent between the American Revolution and 1980. Those opposed to war, according to Jevsen, became targets since they were viewed as enemies against the state as an “internal enemy” (Jevsen 1999, 179). Nancy Ford (2002) and Aryeh Neiser (2003) argue that World War I posed the greatest threat for anti-war activists. Michael Linfield (1990) notes, the Vietnam War era ushered in support for outspoken dissent that challenged the status quo. According to Linfield, speech was accepted if it “connected with the civil rights movement” rather than posed a threat
against American involvement in the Vietnam War (Linfield 1990, 153). This literature relates to the previous discussion of changes among American society to accept mandatory military service. Despite the efforts to reinforce service to the state, people resistance against this policy. This literature regarding resistance exposes resistance to accept conscription, but it also highlights similar activities across different American conflicts.

Other literature addresses the support of foreign policy issues and support of conscription when used for foreign wars. Michael Horowitz and Matthew Levendusky (2011) show that support for foreign conflicts declines when conscription is used to amass the fighting forces. According to Jack Citrin, Ernst Haas, Christopher Muste, and Beth Reingold (1994), the Vietnam War represents a period of declining support of foreign policy, an objection to conscription, and a time of questioning of the legitimacy of the American government (Citrin, Haas, Muste, and Reingold 1994, 3). Sunil Kumar Sahu (1976) describes the relief among American men at the end of conscription and the Vietnam War (Sahu 1976, 393). These studies illustrate many issues when using conscription for large scale and foreign wars. In these cases, foreign policies were questioned and conscription was not supported when used for foreign policies. While other studies show the efforts to instill a sense of service to the state, the use of conscription for foreign policies remained contested in the United States. As Sahu notes, there was a sense of relief only once conscription calls ended in the United States. These studies show the decline of support of conscription when used in foreign wars.

Another set of literature addresses the government’s response. In focusing on the United States Justice Department, Geoffrey Stone (2004) explains how this department used prosecutions as a method to deter others from engaging in anti-war or anti-conscription activities.
Daniel Farber (2008) focuses on government leadership, especially President Lyndon Johnson and President Richard Nixon, as he shows how neither president was concerned with prosecuting resisters for libel (Farber 2008, 98). In a related study, Nan Levinson (2003) focuses on the government’s intentions to censor any speech that was opposed to the war since it was “dangerous,” but rather the government was focused on “[keeping] information secret” (Levinson 2003, 9). These studies expose the response by the United States government to make decisions to protect conscription or deal with dissent. As shown by these scholars, a consistent policy to deal with dissent had not been created. Most of the attention was focused on keeping confidential information as classified rather than implement broad efforts of punishment. Despite the resistance to conscription, most of those that resisted were not punished for their efforts. Most of those punished were leaders of the anti-war movement during the Vietnam War, but punishments were not broad and sweeping to punish all instances of disobedience.

**American Presidents**

Scholars focus upon the American presidency in order to understand the actions and role of presidents in the United States. Presidents serve a vital role within the government of the United States. Scholars examine individual presidents, but also assess the powers of the presidency. This literature, in total, addresses key points of examination to determine the ways presidents persuade, influence, inform, and act unilaterally. This body of literature captures the rationale of presidents as they calculate their actions within a given situation. Scholars have taken notice of these calculated moves by presidents since these actions further reflect the successes of certain presidents. Presidents have certain tools at their disposal, which include going public, their focus on their image and public perception, unilateral action, and their
interaction with the Congress upon issues of foreign policy. These particular cases expose the
complexity of the actions and role of the president regarding policy formation, the
implementation of policy, and the progression of policy.

**Presidents Going Public**

Presidents, in addition to using bargaining and persuasion, use the method of going
public. This method allows the president to introduce policies to the American people as a
means to gain support. George Edwards III (2003) explains how the support of the public is a
“critical resource” of presidents since it serves as a “central strategy for governing” (Edwards
2003, 8). Public support, according to Edwards, marks the success of presidents since failure to
obtain this support “is a failure of leadership for which [presidents] should be held accountable”
(Edwards 2003, 7). Edwards describes the concept of a permanent campaign, first used by
Richard Nixon, that serves as an extension of the presidential campaign to seek approval by the
American public through utilizing a constant campaign (Edwards 2003, 4). Edwards compares
and contrasts President Ronald Reagan and President William Clinton. President Clinton “was
frustrated in his efforts to move public opinion” while President Reagan became president during
“a compatible wave of public opinion, and he effectively exploited the opportunity the voters
handed him” (Edwards 2003, 34-35 and 72). Going Public, for Samuel Kernell (2007), is a tactic
better used in modern times as it highlights the successes of presidents to have influence.
Approval, for Kernell, is measured by support of presidents and support for their policies since
this support is often given after careful, calculated steps by the president to ensure this support
(Kernell 2007, ix).
Brandon Rottinghaus (2006) argues, “I find no differences in congruent position taking between presidents who served earlier (Eisenhower to Ford) for those who served later (Carter to Clinton)” since “the election effect discovered in the president’s first term is repeated in the second term in advance of midterm or presidential elections” (Rottinghaus 2006, 720). He explains that “presidents are found to be more likely to make congruent statements when their popularity is above average and less likely to make congruent statements when their popularity is lower” while they “use the momentum of their reelection (and higher popularity) to continue to involve the public in their policies” (Rottinghaus 2006, 729-730). In uncovering this presidential activity, presidents become “support-maximizing agents” instead of “vote-maximizing agents” (Rottinghaus 2006, 729). Efforts to secure high levels of popularity become a means for the president to gain party support. This support, for example, could ensure the election of future candidate from within the president’s party. Like Edwards, Rottinghaus cites the permanent campaign in which presidents employ tactics that include “media strategies, even staging, speechmaking, and domestic and international travel” (Rottinghaus 2006, 729). These efforts are used to secure public support for the president and their policies. These efforts show strategic choices by presidents to engage with the public, but also illustrate their efforts to secure their future in politics. Obtaining this support, as Rottinghaus and Edwards note, are dependent on certain conditions and employ assorted tactics to further support for their agendas.

B. Dan Wood, Chris Owens, and Brandy Durham (2005) evaluate the president’s public statements and their impact on American attitudes and the economy. Wood, Owens, and Durham explain the American public’s expectations to ensure a stable, strong economy. In addition to the logistical tools of the president to “affect the cost of producer-consumer
exchanges through regulatory policy” or “through nominations to the Federal Reserve Board,”
presidents use speeches as “a powerful instrument of economic leadership that can affect
consumer perceptions of current and future economic conditions” (Wood, Owens, and Durham
2005, 642). Positive remarks bring positive results since “presidential rhetoric can have an
indirect, but substantial effect on macroeconomic outcomes” (Wood, Owens, and Durham 2005,
643). Similarly to Rottinghaus, this study of presidential rhetoric addresses those “presidents
who seek reelection and approval” since there is a need for presidents to “[maintain] credible
rhetorical leadership” (Wood, Owens, and Durham 2005, 643). These efforts of addressing the
economy may allow the president to take a position on an on-going issue and claim issue
ownership. By solidifying the public’s support through positive comments and rhetoric, the
president can successfully influence the public’s perception of the strength of the economy while
attempting to secure their support for any policies regarding the economy. These studies expose
the main advantages for presidents to go public. As these studies show, presidents bring support
and confidence through this tactic.

**Image and Public Perception**

Scholars also assess the role of image shaping and public perception upon the actions of
presidents. Gregory McAvoy (2008) seeks to explain the “public character” of presidents as it
relates to their approval rating (McAvoy 2008, 284). He evaluates the presidents in the “image is
everything” period to understand the likeability of presidents (McAvoy 2008, 284). Presidents
are also evaluated based upon their judgement, decision making, and actions. Brandice Canes-
Wrone and Keeneth Shotts (2004) address a related concept, which consists of the effects of
public opinion or support of a president’s policy based upon their decision making. Public
support for a popular cause is difficult since presidents risk catering toward popular causes that may not be appropriate for the long term benefit of the nation (Canes-Wrone and Shotts 2004, 695). McAvoy, Canes-Wrone and Shotts all address the importance of the president (and presidential actions) as a response or appeasement toward public opinion. They note the need to shape a president’s image, but also address the president’s actions as a response to this perceived popularity or unpopularity. According to the findings of Canes-Wrone and Shotts, similar to the work of Rottinghaus, presidents “are more likely to endorse popular policies in the second half of the term” (Canes-Wrone and Shotts 2004, 702). These studies expose the complex issues of shaping the image and public perception of presidents within a given period or during a particular part of their tenure in office. Adhering or providing support for causes bears risks given the nature of the cause, but presidents can gain support for themselves when publicly supporting certain issues. These instances illustrate the ways in which presidents behave within a given political climate and in conjunction with the attitudes of the American public.

Unilateral Action

Presidents may also utilize unilateral actions as a means to influence public policy. Kenneth Mayer (2002) describes the ways the presidents use executive orders to utilize their power. Existing literature focuses on the leadership and strategies of presidents rather than their usage of executive orders. Presidents may appear weak since they are “hobbled by the separation of powers and the short reach of his formal legal authority,” but power of presidents is “far from being a matter of prerogative or legal rule” since presidents have the ability to persuade (Mayer 2002, 4). Despite this power to persuade, “presidents have relied on their executive

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authority to make unilateral policy without interference from either Congress or the courts” (Mayer 2002, 4). Mayer addresses Richard Neustadt’s (1960) concept of bargaining since executive orders can be placed into two categories. Executive orders are either “self-executing” when they “do not lead to immediate action” or are a “bargaining tool” (Mayer 2002, 29-30). When used as a “bargaining tool,” this closely mirrors Neustadt’s concept of persuasion (Mayer 2002, 31). In this case, presidents act on their own with little oversight of the other branches. This action is persuasive in an effort for presidents to have influence in a different way since their powers, in this given instance, extend to influence a public policy on their own terms.

William Howell (2003), in a similar study, highlights how executive orders are essential tools for presidents as they relate to both foreign and domestic policy. He classifies executive orders as either “preemption” or “act alone” based on their usage (Howell 2003, 15). In employing unilateral action, presidents have the potential to be effective presidents. As Howell notes, “when presidents unilaterally set policies that do not require any positive congressional action, they enjoy tremendous discretion; non-action on the part of Congress and the courts is functionally equivalent to support” (Howell 2003, xvii). In his critique of Neustadt (1960), Howell notes the importance of the president’s actions regarding a policy while they wait for a challenge from Congress or the courts. According to Howell, “scholars have lost sight of one of the most important ways in which presidents influence public policy in the modern era: that is by setting policy on their own, by acting unilaterally” (Howell 2003, 175). As these studies show, unilateral action allows the presidents to drive the implementation of policy. If not faced with a challenge from the other branches, presidents can successfully exercise their role in driving policy.
Presidents use presidential proclamations as another tool of unilateral action. Brandon Rottinghaus and Jason Maier (2007), evaluating the time period of 1977 to 2005, illustrate the use of proclamations as a “policy-making instrument” as it extends president’s “regulatory power” (Rottinghaus and Maier 2007, 339). As with recess appointments, Rottinghaus and Maier show how presidential proclamations work in tandem with other tools. According to Rottinghaus and Maier, proclamations “are also not independent of larger policy or political concerns” (Rottinghaus and Maier 2007, 342). Though unknown to the public, proclamations “extend presidential power under a unilateral presidency” (Rottinghaus and Maier 2007, 342). Presidential proclamations grant “little control” for Congress since they “may not sanction the specific policy implementation but [Congress] has largely ceded the authority to act on the issue to the White House” (Rottinghaus and Maier 2007, 342). As they illustrate, the weakness of Congress increases the usage of presidential proclamations since weakness in the Congress minimizes a response to presidential action.

Presidents use signing statements as a “[strategy] employed to preserve executive prerogatives and advance presidential policy in the face of gridlock” (Kelley and Marshall 2010, 168). In examining the usage of signing statements between 1981 and 2008, Christopher Kelley and Bryan Marshall (2010) illustrate the “incentives” of their usage (Kelley and Marshall 2010, 168). According to Kelley and Marshall, their increased usage is a tactic to “challenge legislation and/or assert constitutional powers” amid “unified government, major legislation, and

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8 In Table 1, Rottinghaus and Maier illustrate the major categories of issues that include “trade, national parks, and international agreements” (Rottinghaus and Maier 2007, 340).
election cycles” (Kelley and Marshall 2010, 169). Congressional opposition to signing statements is less likely to occur if Congress is politically aligned with the president (Kelley and Marshall 2010, 176). Presidential approval ratings and election years also influence the usage of signing statements. Signing statements “assist the president toward cementing powers and a policy legacy” (Kelley and Marshall 2010, 177). Rhetorical signing statements are used “to garner press attention or communicate to an important constituency” and constitutional signing statements are used as a means to “enhance presidential power or control over policy” (Kelley and Marshall 2010, 177). Signing statements are more likely to be used on major rather than minor legislation since presidents are “strategic” by “wielding constitutional signing statements on major legislation where the policy consequence and concern over interinstitutional competition are the greatest” (Kelley and Marshall 2010, 184). As with the other studies previously discussed, this serves as another example of presidential action as related to strategic planning and effort. This further illustrates the relationship of the president with the Congress to determine the positive motives to act unilaterally. In these cases, presidents purposefully act and react as they factor key aspects of the given social context.

Louis Fisher (2014) reassesses the powers applied by presidents. Fisher notes how older scholarship “urged presidents to act decisively and unilaterally, equating executive power with the public good. The need to check and limit power was ignored or dismissed” (Fisher 2014,

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10 Rhetorical signing statements “are intended to claim credit, reward important supporters or political constituencies, and/or to cast a negative light on political opponents” (Kelley and Marshall, 2010, 173). Constitutional signing statements “outline qualifications and/or challenges to certain section(s) of the bill that may violate presidential power and principles of federalism/separation of powers, as well as civil liberties” (Kelley and Marshall 2010, 174). Presidents “reinterpret vague or undefined language in the bill in a fashion that strengthens executive prerogatives” (Kelley and Marshall, 2010, 174).

11 Periods of unified government increase the usage of constitutional signing statements (Kelley and Marshall, 2010, 184).

12 According to Kelley and Marshall, President George H. W. Bush is a unique case.
164-165). Recent scholarship “systematically debunked” this older literature since new scholarship seeks to “place executive power within the framework of the Constitution, law, and checks and balances” (Fisher 2014, 167). Fisher’s findings expose overarching legal issues of presidential action in policy making. These cases show how the presidents retain these powers of unilateral action as they navigate policy decisions amid their interaction with the Congress.

Scholars disagree upon the advantages and disadvantages of the use of tools since presidential success varies when using these tools. Neustadt (1960) stresses the importance of bargaining and persuasion, but this tool has not been uniformly used by all presidents. Presidents may choose to plea directly to the American people to gain support. They may further utilize unilateral actions to bypass Congressional interference to their policies. These other tools demonstrate how presidents have been successful without traditional bargaining or persuading. Neustadt’s work shows how presidents have resorted to extreme action in certain situations. Going public, for example, brings attention to issues. Despite the ability to employ this tactic, presidents (such as President William Clinton) have struggled to effectively gain their desired results. These cases illustrate the difficulty when using these tools since presidents deal with the consequence when they fail to use the tools properly in a given situation.

**Two Presidencies Thesis**

According to Aaron Waldavsky (1966), “presidents had much greater success in controlling the nation’s defense and foreign policies than in dominating domestic policies” since “presidents are sometimes frustrated by congressional resistance and counteroffensive.”13 He offered an explanation of this trend through his Two Presidencies Thesis. The thesis illustrates

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the instances when Congress defers to the president. Lee Sigelman (1979), in offering a reevaluation of Waldavsky’s Two Presidencies Thesis, argues that “most presidents have not enjoyed a freer hand in the foreign and defense arenas than in domestic policy-making” (Sigelman 1979, 1203). Sigelman questioned the validity of this thesis upon earlier periods in American history when Congress dominated foreign policy. For Sigelman, though, the “presidential performance in both domestic and foreign and defense policy had slipped” (Sigelman 1979, 1196). Sigelman argues “there has been only a slight differential in congressional support on domestic as opposed to foreign and defense issues” (Sigelman 1979, 1201). President Gerald Ford and President James Carter represent exceptions, but presidents were successful 88% on domestic issues among members of their party (Sigelman 1979, 1201). When presidents deal with members of the opposing party, between 1957 and 1972, the “opposition party was consistently more supportive of the President’s position on key foreign and defense policy votes than on key votes pertaining to domestic matters” (Sigelman 1979, 1201). This “dramatic erosion of support” did not only influence foreign policy since Congressional support of a president’s domestic policies “dwindled to a point even lower than support for his domestic positions” (Sigelman 1979, 1203). Recent presidents have been unable to secure 60% of key vote support (Sigelman 1979, 1204).  

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14 President Dwight Eisenhower and President Richard Nixon are exceptions since they performed better on foreign and defense issues. President Lyndon Johnson and President Gerald Ford performed better on domestic issues (Sigelman, 1979, 1203).

15 For Wildavsky, “the presidency had become even ‘more powerful vis-à-vis institutional competitors’” (Sigelman 1979, 1195). See, Aaron Wildavsky, “The Past and Future Presidency,” The Public Interest (Fall 1975): 57-58.

16 Sigelman argues “presidents have won approximately the same proportion of victories within their own party as their predecessors, but have only very rarely proven able to muster majority support within the opposition party” (Sigelman 1979, 1204).
In using boxscores, Wildavsky illustrates how “presidents prevail about 70 percent of the time in defense and foreign policy, compared with 40 percent in [the] domestic sphere” (Wildavsky 1966, 8). Critics of Wildavsky note the limitation in using boxscores since their usage may skew the conclusions. Boxscores illustrate how “these measures are an indiscriminate mixture of a few apples – major pieces of legislation – amidst a myriad of oranges – relatively trivial concerns” (Sigelman 1979, 1198). For this reassessment of Wildavsky, Sigleman focuses on the 406 of the 582 key votes that took place between 1957 and 1978. Sigleman’s results indicate that “three out of every four key vote tests of presidential support have focused on domestic issues, a finding consonant with Wildavsky’s argument” (Sigelman 1979, 1200). According to these key votes, presidents have been successful 56.5% on domestic policies while being successful 60% on foreign and defense policies since 1973 (Sigelman 1979, 1200).

Brandice Canes-Wrone, William G. Howell, and David Lewis (2008) also evaluate the Two Presidencies Thesis. Success is measured when presidents “work hard informally to counteract formal structures that limit their power in domestic policy, they are unlikely to succeed fully so that a power differential matures in foreign and domestic policy” (Canes-Wrone, Howell, and Lewis 2008, 14). They “[distill] an institutional logic that explains how first-mover advantages, informational differences, and electoral pressures grant presidents greater influence

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17 Other scholars, including Lance T. LeLoup and Steven A. Shull have analyzed this thesis. They concluded, “the president was still receiving greater congressional support on foreign and defense than on domestic roll calls, but the difference had become less pronounced than Wildavsky originally reported” (Sigelman 1979, 1198).
18 According to Sigelman, “For each of these 406 roll calls, it was first determined whether the president’s position had been upheld or defeated, which entailed examining each roll call to find whether the president’s position had been supported by a majority of those voting or, in a few cases, by an extraordinary majority (e.g. cloture votes, Constitutional amendments) or by the one-third-one needed to stave off a veto override attempt. Then for each year, and ultimately for each presidency, the percentage of presidential victories on domestic and foreign and defense roll calls, respectively, was also calculated” (Sigelman 1979, 1199).
19 President James Carter represents a “deviation” from this outcome, however, “roll calls on which the Carter record is built is very small” (Sigelman 1979, 1200).
in foreign than domestic affairs” (Canes-Wrone, Howell, and Lewis 2008, 14). The deference by Congress to presidents show the validity of this thesis. They “test for the existence of the two presidencies in a specific domain that Congress cannot delegate, budgetary appropriations, and a domain that explicitly incorporates delegation, agency creation” (Canes-Wrone, Howell, and Lewis 2008, 14). Similarly to Sigleman, they assess the influence of party affiliation upon support for the president and their policies. Their “findings hold even when controlling for a host of other factors, including the possibility of bipartisanship in foreign affairs” (Canes-Wrone, Howell, and Lewis 2008, 14). According to Canes-Wrone, Howell, and Lewis, “regardless of who is president, their ability to achieve objectives on issues of foreign and defense policy should contrast strikingly with the progress of their domestic agenda” because “this disjunction is likely to be all the more striking if presidents mistakenly believe that they can translate their achievements in foreign affairs to ones in domestic policy” (Canes-Wrone, Howell, and Lewis 2008, 14).

Richard Fleisher, Jon Bond, Glen Krutz, and Stephen Hanna (2000) explain that “Wildavsky also argued that presidents should dominate Congress in foreign policy” while the thesis “predicts high levels of success on foreign policy as well as differences between foreign and domestic policy” (Fleisher, Bond, Krutz, and Hanna 2000, 3). According to Fleisher, Bond, Krutz, and Hanna, “the difference between foreign and domestic success rates shows up consistently for minority presidents” and “the absolute level of support on foreign and defense issues has declined since the second Reagan administration” (Fleisher, Bond, Krutz, and Hanna 2000, 3). In evaluating the influence of party affiliation upon support of the president, Fleisher, Krutz, and Hanna conclude that “opposition party base behavior reveals that foreign policy
voting has become considerably more partisan” (Fleisher, Bond, Krutz, and Hanna 2000, 3). In agreeing with Sigelman, they argue that the Vietnam War drastically influenced the Congressional relationship to the president. They note how “characteristics of foreign and defense issues that make them different from domestic issues still permit the president to lead in times of international crisis” (Fleisher, Bond, Krutz, and Hanna 2000, 22). While their critique of the thesis does not argue the president is weak, their critique seeks to understand “the conditions under which each branch can get the other to go along with its preferred policy” (Fleisher, Bond, Krutz, and Hanna 2000, 23).

Other scholars seek to reexamine the Two Presidencies Thesis in more recent times. Scot Schraufnagel and Stephen Shellman (2001) argue that “more discretion for the president in the realm of foreign policy (or domestic policy for that matter) means more centralized decision making and conceivably less democratic control” (Schraufnagel and Shellman 2001, 706). This thesis “poses no threat to any benefits derived from interbranch competition” (Schraufnagel and Shellman 2001, 706). In evaluating party affiliation and its influence upon support of the president as Sigleman and Canes-Wrone Howell and Lewis evaluate, Schraufnagel and Shellman explain, “it appears that there is no consistent increase in congressional support for the president in foreign policy derived from opposition party members” (Schraufnagel and Shellman 2001, 706). Despite the removal of some roll call votes within their set of data, Schraufnagel and Shellman determine “that presidents do not systematically receive more support in the foreign policy realm” (Schraufnagel and Shellman 2001, 706). Their conclusions reaffirm the conclusions of Fleisher, Bond, Krutz, and Hanna (2000).
In reaching a similar conclusion to the Two Presidencies Thesis, William Howell, Saul Jackman, and Jon Rogowski (2013) use their Policy Priority Model to determine if and when Congress defers to the president. This model, published in 2013 and through using game theory, “[identifies] the parameters of the political environment that lead Congress to enact policies that more closely resemble the president’s preferred policies” to create “a set of prediction about the impact of war on presidential influence” (Howell, Jackman, and Rogowski 2013, 31). Similar to the Two Presidencies Thesis, the Policy Priority Model concludes that Congress defers to the president in foreign policy and during times of war or national emergency. Despite their different source base and use of a mathematical model, the thesis and model arrive at similar conclusions that affirm how Congress defers to presidents in regard to foreign policy during times of war or national emergency.

In assessing the Two Presidencies Thesis, scholars determine the times when the Congress defers to the president regarding issues of foreign policy. This body of literature exposes overarching issues between these two branches of government. Much like the other bodies of literature, this aspect requires much examination of the context. The Two Presidencies Thesis further exposes the factors of ongoing wars, the role of the opposition party, and how the Vietnam War influenced this relationship among the president and Congress. Context is additionally essential when evaluating the actions of Congress.

Despite the contributions of these bodies of literature, scholars have not addressed the role of the president in implementation or enforcement of conscription. Throughout American history, the president signed conscription bills into law to supplement the low totals of the United States military. While the presidents have not taken a unilateral action to push for conscription
laws, they have been supportive of this military policy. Conscription, despite the war in which it was used, continued to require the service of America’s male population. The usage of presidential tools is contingent upon certain situations since presidents mostly use certain tools when they would not be challenged by Congress or while presidents are enjoying comfortable approval ratings. While there is an increased usage of certain presidential tools, their usage is dependent on a given situation. Presidents can use unilateral actions, but some of these actions can be challenged by Congress or have no legitimate legal value. The usage of unilateral actions may bring press attention to an issue as it brings the president more attention. Scholars further illustrate the deference of the Congress to the president for foreign policies. While most scholars have noted the increased access to information, members of Congress have additionally deferred to the president during times of war and national emergency. These studies expose the limitations in the existing literature to illustrate specific cases to show the actions of the presidents to protect the vital interest of conscription.
Conscription remained a contested military policy among factions of the American public and among some members of Congress. Despite these challenges, conscription’s supporters in Congress continued to implement pieces of legislation to require the registration and mandatory service of young men. This military service, during declared and undeclared wars, became an essential component of American military policy. Members of Congress remained vocal in their support for or against conscription. Many of their arguments, either positive or negative, remained consistent throughout American history. These arguments of support inform and influence many of the statements made by the presidents. National defense, national security, and obligations of citizenship remained constant themes of support for conscription. Those opposed to this system of mandatory military service echoed the sentiments to protect personal liberty, the benefits of volunteerism, and the flaws within conscription. Despite these criticisms against conscription, presidents remained supportive of using conscription by signing the conscription bills, making statements, and issuing executive orders regarding this policy.

While there have been some noticeably silent presidents, most have been vocal in their support of conscription. In the case of President Wilson, for example, he made a proclamation on the same day in which he signed the conscription bill into law. Most presidents have made statements that encouraged compliance, emphasized punishments for disobedience, and expressed their alteration to the law to increase fairness. After the formal end of conscription, President Ford and President Carter made statements of support to eliminate punishments for those that violated conscription policies during the Vietnam War. Overall, the presidents issued
statements of support of conscription once the conscription bills had been passed by the Congress.

The usage of a federally controlled system of manpower procurement illustrates a significant alteration in military policy. Once the militia system was proven to be untenable, the Congress passed legislation to create a federally controlled system. This new system eliminated the reliance on states and their governors to muster their designated quotas of men into the military. The proposal of a federally controlled system of conscription was not new when proposed during the American Civil War. Since the War of 1812 had ended more quickly than expected, the Congress suspended their plans to implement a federal system of conscription. Since its use during the American Civil War, federal conscription served the nation’s military needs in all subsequent conflicts until it was replaced with the All Volunteer Force. The All Volunteer Force took effect in 1973 following the Vietnam War. Even as conscription laws changed, the basic premise remained consistent through the years. Conscription laws expired, which prompted the Congress to draft and pass new legislation at moments when the nation needed a system to ensure the requisite number of men were mustered into the military. Conscription is an interesting case study to test the theories of critical juncture, path dependency, power of the president, unilateral action, and the Two Presidencies Thesis since conscription represented a significant deviation with existing military policy. The role of the president amid the deviation of military policy is additionally important to examine.

Used during times of peace and during times war, the implementation of conscription represents a critical juncture. Ruth Berins Collier and David Collier (1991) define critical juncture as “a period of significant change” that “produce distinct legacies” (Collier and Collier
In using conscription as an example, the implementation of conscription was a departure from the militia system. This represents a critical juncture from past military policy in the United States. In the study by Collier and Collier, these periods of critical juncture range in time between nine and twenty-three years. Periods of an active draft in the United States ranged from three years during the American Civil War to just under a decade during the Vietnam War. Despite the varying amount of men conscripted in each conflict, the consistent use of conscription represents this departure with previous methods that had been used to create a large standing military. Periods of an active draft call often pertain to a particular conflict. These conflicts often define the moment in American history to further illustrate a movement from isolationism, the emergence of the Cold War, engagement during the Cold War, and the end of conscription. At various moments in American history, conscription remained a constant policy. Conscription remained the sole method used to supplement the small standing military. Despite changes in American foreign and domestic policies, conscription remained a consistent policy.

It would be noteworthy to highlight the importance of significant changes to conscription over time. In 1940, the Congress passed the nation’s first peacetime draft. While conscription was not new, the usage of a peacetime draft represented a departure with earlier periods since an active draft call commenced in the absence of an active conflict. Following World War II, the Congress passed another peacetime conscription bill in 1948. In addition to this reinforcing an important precedent, the conscription law of 1948 served as the model for the most modern system of conscription. This marks another movement forward in the application of this type of law. While some Americans (and members of Congress) were critical to the implementation of a peacetime conscription call, this represents a critical juncture since this is a significant departure
with previous policy to implement conscription calls following a formal declaration of war. Conscription had been used to supplement a small standing military, but was now used to create a large standing military during peacetime before American involvement in a conflict.

James Mahoney (2001) advances this idea of critical juncture. According to Mahoney, critical junctures are a based upon intentional decisions “from among two or more alternatives” when “willful actors shape outcomes in a more voluntarist fashion than normal circumstances permit” since “these choices demonstrate the power of agency by revealing how long-term development patterns can hinge on distant actor decisions of the past” (Mahoney 2000, 6-7). In the case of conscription, these essential actors would be the members of Congress that drafted bills and voted favorably upon conscription laws. These individuals were the essential agents to ensure this military policy continued to be used in America’s wars from the American Civil War through and including the Vietnam War. Despite calls from opponents in the Congress and unrest among civilians, conscription’s supporters played a vital role to implement and alter conscription through American history. These changes (each time conscription bills were passed) demonstrate a purposeful alteration to modernize this policy. These alterations, in the view of conscription’s supporters, also sought to eliminate resistance against this policy.

In a related conception of context and cause and effect, Karen Orren and Stephen Skowronek (2004) address events following critical junctures as they also note the importance of path dependence. The linkage among different periods of development represent “the idea of disjuncture in history, of a break with the past, and the historical nature of the new construction that ensues” (Orren and Skowronek 2004, 103-104). In understanding this path, or relationship between the existing order and new order, this enables future scholars to examine development
of political systems and the changes ushered in by a sequence of events. Paul Pierson (2004) highlighted the importance of path dependence to understand “how the costs of switching from one alternative to another will, in certain social contexts, increase markedly over time” and expose “issues of timing and sequence” to understand “formative moments or conjectures from the periods that reinforce divergent paths” (Pierson 2004, 19). This path, in Pierson’s view, may be marked by “social mechanisms” (Pierson 2004, 28). Orren and Skowronek note the limitations in this approach since it may be difficult to locate the exact moment or event that caused a change in political development.

Despite its limitations, this approach can be used to understand the relationship among changes to institutions, the implications of the historical context, and the role of politics (Orren and Skowronek 2004, 107). These studies use historical examples such as the Progressive Era or the implementation of the New Deal as key moments that forged new paths of political development in the United States. These examples illustrate a significant departure with existing understandings of the role of government, but further illustrate the movement forward for the federal government to take an active role in regulations, a new political agenda, and the creation of the welfare state. In understanding path dependence, these events show pivotal moments when a selected action had been chosen since it has a lasting influence on future events. For example, most American historians would agree that the New Deal(s) were a response and extension of Progressive Era reforms that had taken place decades earlier.

In this study of conscription, many essential events shaped and influenced politics, the military, and American society. In this path to implement conscription, past politicians had exhausted other options before the implementation of federal conscription. The American Civil
War, as most American historians would agree, represented a period when the federal government (and its power) extended and expanded. The federalization of the railroad and telegraph, for example, illustrate the changing nature of federal power. At that moment, when enlistment had declined and state governors were withholding their state’s men for service, the Congress created a federal system to directly conscript men into the United States military. Previously, the militia system had allowed men to remain in service to their local states. The conscripting of men directly into the United States military in 1863 illustrates an important path, which was followed until 1973. As the nation entered World War I, again plagued with issues of a small standing military, the Congress quickly changed conscription to eliminate many of its prior flaws and limitations. In using the Enrollment Act of 1863 as a model, Congress quickly passed a new conscription bill to register, train, and assemble men for the battlefields in Europe. This path toward a federally controlled system began in 1812, but the War of 1812 ended before the Congress implemented conscription. Once used in the American Civil War, the path had been forged to affirm the importance of conscription as it was used during all other subsequent wars.

Rather than revert back to using the militia system, the Congress continued to approve bills to create federally controlled and maintained systems of conscription in 1917, 1940, 1948, and 1967. The militia system, that had been used in the 18th and 19th Centuries, changed in 1903 through the formal creation of the National Guard. Changes to the militia during the American Civil War further changed American attitudes from a state mentality to a federal mentality of military service. This is a significant since it changed the understandings of service for a local state toward the United States as a federal state. This understanding of service to the United
States as a federal state, by extension, also reinforced the Congress to implement new conscription bills to quickly increase the size of the military through a federally controlled and maintained system. The system itself has changed over time, but the basic premise of federal control has remained consistent over time. The role of the Congress to pass legislation and the role of the president to sign the bills into law remained consistent over time.

Some scholars address and define power as it relates to presidents. As Richard Neustadt (1960) demonstrates, presidents have the power to persuade. While there are limitations in exercising this power since expectations and ability to execute may differ, Neustadt explains the successes of presidents (Neustadt 1960, ix and 4). For Neustadt, this power to persuade is a tool to be used in decision making. He further discusses the importance and limitations of bargaining since it provides “no guarantees” and the president’s ability to “influence remains a two-way street” (Neustadt 1960, 47). He uses the Marshall Plan (and President Truman’s role in that process) to expose the role of the president. In this particular case, the president had a certain advantage to have influence. As Neustadt argues, the success of President Truman in this post-war relief effort highlighted the president’s power regarding decision making and making choices (Neustadt 1960, 47). Stephen Showronek defines power as “the resources, formal and informal, that presidents in a given period, have at their disposal to get things done” (Skowronek 1993, 18). Both of these scholars highlight the presidents’ ability to exert this power upon those in government, the presidents’ ability to make choices, and the presidents’ role in persuasion and leadership. Both of these scholars group presidents upon criteria. Neustadt groups presidents as premodern or modern. Skowronek groups presidents based upon patterns of their behavior to
continue existing alignment, preside over a time when existing ideologies decline, or serve to reconstruct or restore political order.

While these scholars address a myriad of example and case studies to support their categories and descriptions of political time, these scholars do not detail the presidents’ role during the times when conscription was used to supplement a small standing military. Conscription poses a unique case for presidents to influence public support and compliance for this unpopular military policy. Despite this opportunity to use their power to persuade or “get things done,” presidents have been noticeably absent in regard to conscription (Skowronek 1993, 18). While Neustadt addresses the role of presidents in war making, this work is devoid of further discussion of the role of presidents in making decisions regarding the systems to muster and raise the military during times of war. Neustadt, in using President Nixon’s expansion of the Vietnam War into Cambodia, addresses overall uses of the military (Neustadt 1960, 196). While this example does show President Nixon’s use of the military to expand the conflict, this example does not address the president’s role regarding conscription.

Skowronek uses President Lyndon Johnson as an example to illustrate his purposeful effort to fight a war while he worked toward a large scale domestic program (Skowronek 1993, 343). In this case, Johnson weighed his options since he was determined not to suffer political “stampede” by Republicans as President Truman had suffered during the Korean War (Skowronek 1993, 343). At the height of the Vietnam War, nearly 40,000 men were drafted monthly. Ultimately, Johnson was not able to serve his domestic and foreign policy items. As Skowronek shows, President Johnson decision to withdraw from the 1968 election resulted from his apprehension from further escalation of the Vietnam War. While this piece of Skowronek’s
work does not explicitly address Johnson’s role regarding conscription, an escalation in fighting would have caused an escalation in conscripted men. Skowronek does emphasize the power of the presidents to accomplish agenda items and goals, but this example shows how Johnson was placed “in the crossfire of demands that more be done on behalf of one or another of the commitments that he pulled in his train” (Skowronck 1993, 356). In this instance, Johnson was not able to wield his presidential powers to conclude the war (through using conscription or other alternative means) or seek an additional term for the presidency.

In a related discussion of power, Louis Fisher (2014) shows changes among presidents as they exerted power. Fisher notes the changes in existing literature since older literature had argued that presidents exerted more power to act unilaterally, but newer scholarship has shown that presidents are more restricted due to checks and balances (Fisher 2014, 167). This older scholarship has been changed by more recent events, which include “presidential wars” and presidential scandals (Fisher 2014, 168). In the case with conscription, the presidents in office during its use, illustrate similar trends and modes of behavior. These presidents appear to follow the actions of the Congress. They only made statements following a successful Congressional vote to pass conscription legislation. Given that the executive and legislative branches are granted different duties, this would serve as an example of Fisher’s conclusion of the role of checks and balances. While presidents often made statements of support for the conscription bill, presidents also expressed their role to enforce the laws as passed by the Congress. These statements of support, again, are only issued following the favorable vote by the Congress since these presidents have not taken a formal stance upon conscription before the law passed. Even during the presidential campaign of 1940, President Roosevelt and Republican candidate
Wendell Willkie voiced support of conscription just weeks before the election. Their statements of support followed the favorable vote by the Congress to pass the conscription bill. As Fisher notes, decisions by presidents (in more recent times) have been affected by the War on Terror. This has ushered in “renewed respect for constitutional government,” and may be a factor to consider if conscription would be used in the future to supplement the existing All Volunteer Force (Fisher 2014, 168).

In taking this analysis a step further, some scholars have addressed the presidents’ power to act unilaterally regarding policy. Kenneth Mayer (2001) categorizes executive orders as either bargaining tools for presidents or as used to usher in immediate action. When used, in Mayer’s view, presidents bypass any barrier of action by the courts or the Congress (Mayer 2002, 4). While presidents may appear weak when evaluating their powers as granted in the Constitution, Mayer stresses how executive orders provide presidents with powers to act without Congress. William Howell (2003), in a similar conclusion to Mayer, argues that unilateral action enables presidents to be effective leaders especially when not faced with resistance from the Congress or courts. For Mayer and Howell, executive orders allow presidents to drive policy themselves without waiting for the Congress to lead policymaking. Brandon Rottinghaus and Jason Maier (2007) demonstrate the use of presidential proclamations as a “policy-making instrument” (Maier 2007, 339). Rottinghaus and Maier note how the use of proclamations extend the power of the presidents.

This literature exposes the presidents’ ability to initiate and take the lead in policy formation. In the case of conscription, however, presidents have not taken unilateral action to implement this military policy. Presidents have issued executive orders or made proclamations
regarding conscription, but this followed the actions of Congress. In this case, these executive orders and proclamations only reinforce the rules and regulations detailed in the law passed by Congress. Presidents made bold statements regarding compliance to conscription laws, which highlighted the provisions regarding punishment within the law. Some presidents did not make formal proclamations or issue executive orders regarding conscription. In these instances, presidents were not attached to this policy other than to sign the legislation. Conscription remains an interesting case to examine since presidents have not taken unilateral action to implement conscription. Their executive orders and proclamations have reinforced the laws or were statements of support for the laws passed by Congress.

There are, however, several cases in which the presidents have taken a step forward in regard to conscription. Once the bill was signed into law, some presidents have made statements of support to fix provisions to make conscription more equitable among America’s men. President Johnson and President Nixon issued statements that called for changes to the existing system. Nixon, additionally, made statements in support of deferments that had been removed by the Congress. While Johnson and Nixon supported conscription after its passage by Congress, they were vocal in proposing changes to the system. Additionally, Johnson issued an executive order to change the mailing of classification documentation. Nixon called for significant changes to eliminate the length of eligibility, but further called the retention of deferments for undergraduate and graduate students. While Johnson and Nixon supported the Military Service Act of 1967 to implement conscription, their executive orders changed the system that had been voted upon by the Congress.
President Ford and President Carter dealt with conscription policy violators during their terms. While started during Ford’s term, pardons and clemency were to be given to those that met certain standards of review. Conscription laws throughout American history were detailed regarding the punishments for violators. In a departure with the past, this would be the first time violators were forgiven for their violations through a clemency board. Ford created a clemency board and even extended the period of clemency to accept more violators. Carter continued this effort when he issued an executive order the day after he was inaugurated as president. With the formal end of registration and the implementation of the All Volunteer Force, Ford was focused on reconciliation for those that violated the law. Carter continued this effort at the beginning of his term.

This concept of unilateral action, however, may best be applied in the case of President Carter. Following the Soviet invasion of Afghanistan, Carter made a statement that called for the restoration of registration for conscription. In a departure with other presidents, Carter issued a statement informing Congress that he would like to reinstate registration given the current international events. Carter was explicit regarding the amount of money he deemed suitable to cover the cost of registration. In a drastic departure with previous uses of conscription, Carter called for the registration of women. Carter wanted female registration to allow women to be open for potential non-combat service in the military at the time of an active conscription call. When Congress finally responded to Carter’s request to reinstate registration, the Congress did not allocate the funds required for the registration of women. For Carter, the registration of women sought to make conscription even more equitable than the earlier alterations of older conscription laws. Congress disagreed with Carter’s proposed registration of women. This may
be the most apparent example of a president taking an active role in setting policy. Despite asking for the approval of the Congress, Carter deviated from previous registration policy to make this shift toward gender equality among registrants.

Scholars have attempted to explain the relationship between the president and the Congress. Aaron Wildavsky (1966) introduces this theory of this deference by the Congress to the president regarding foreign policy issues. Lee Sigelman (1979) challenges this theory since, as Sigelman argues, Congress once dominated foreign policy. Sigelman, however, did highlight President Eisenhower and President Nixon’s success with foreign policy because of this deference by the Congress (Sigelman 1979, 1203). Overall, in Sigelman’s work, the opposition party was more consistently supportive of the president between 1957 and 1972 (Sigelman 1979, 1201). Richard Fleisher, Jon Bond, Glen Krutz, and Stephen Hanna (2000) highlight the differences between foreign and domestic policies as they argue the presidents still take the lead amid international crisis (Fleisher, Bond, Krutz, and Hanna 2000, 23). Scot Schraufnagel and Stephen Shellman (2001), in reaffirming the findings of Fleisher, Bond, Krutz, and Hanna (2000), did not find that presidents consistently received increased support from the opposition party for foreign policy nor did presidents receive greater overall support of foreign policy initiatives (Schraufnagel and Stephen Shellman 2001, 706). Earlier literature indicates that the Vietnam War changed the relationship between Congress and the president. William Howell, Saul Jackman, and Jon Rogowski (2013) create their Policy Priority Model. For example, President Franklin D. Roosevelt and President George W. Bush experienced minimal resistance for their proposed budgets during World War II and following the terrorist attacks on September 11, 2001 (Howell, Jackman, and Rogowski 2013, 263). World War II and the War on Terror are
significant since President Truman experienced disruption regarding budget approval amid the Korean War.

Several scholars agree that Congress defers in the case of foreign policy since presidents have greater access to information. In the case of conscription, Congress has taken a more active role in this aspect. While conscription was mainly used for the purposes of foreign wars, declared and undeclared, Congress took the lead to draft and pass bills to create a system of registration that conscripted men directly into the United State military. The presidents largely waited for these bills to pass within the Congress before making statements of support and pleas for compliance. In using conscription as a case study, the presidents waited to respond to the actions of the Congress. Some presidents, in using President Eisenhower as an example, were silent on making any proclamations or issuing any executive orders regarding conscription. Upon each time a conscription bill passed in the Congress, the incumbent president signed the bill into law.

There are some notable cases in which the president sought to influence conscription. Nixon made a statement in 1969 to the Congress to eliminate conscription. When conscription was set to expire in 1971, however, Nixon called for the Congress to extend the law for two more years. Congress extended the law, and conscription ended in 1973. Nixon was the first president to propose an end to conscription. President Nixon issued remarks supportive of voluntary enlistment, but also issued his suggestions to make conscription more equitable for America’s men. Nixon was also instrumental in his efforts to use “random selection” or the lottery system to select men based on their birth days rather than age. Efforts for fairness did not originate with Nixon. Following the American Civil War, James Oakes (the organizer of the Union’s
conscription plan) wrote his plan for improvement. Many of his suggestions were used when conscription was implemented during World War I, but these changes were not directly proposed by President Wilson. President Johnson had ordered a special commission to evaluate conscription in 1966 since Johnson felt conscription needed to be improved to increase fairness. These efforts illustrate the actions of certain presidents, but they worked within the system that had been created by Congress. President Carter may represent a significant departure since Carter called for the Congress to resume registration in 1980 following the Soviet invasion of Afghanistan. As the Cold War continued, Carter argued the importance of registration amid this threat of Soviet action. While Carter called for the registration of men and women, Congress pushed back by only appropriating funds for the registration of men.

Since its use during the American Civil War, federal conscription expanded the size of the nation’s military. Conscription finally ended with the creation of the All Volunteer Force in 1973, which coincided with the expiration of the last conscription act. Conscription laws changed, but their basic structure and guidelines remained consistent between 1917 and 1967. As conscription laws expired, the Congress drafted and passed new legislation to serve the nation’s military need. Used during peacetime and during times of war, conscription remained a consistent military policy during specific moments between 1863 and 1973. American attitudes of service changed. Despite the unpopularity of conscription, the militia system was deemed outdated, outmoded, and unreliable to amass a sizable standing military.

Conscription is an interesting case study to examine when applying the theories of critical juncture, path dependency, power of the president, unilateral action, and the Two Presidencies Thesis. In a departure with the militia system, the implementation of federal conscription
signifies a critical juncture. In creating this new system, Congress passed legislation to directly conscript men into the United States military. The usage of the peacetime conscription law is also a critical juncture from past since conscription had only previously been used during times of war. The theory of path dependence shows further implications upon American attitudes of service to the nation. Previously, men understood service as service to their local states rather than the federal state. This changed the expectations of service since all subsequent wars brought men directly into the United States military. The theories of unilateral action should not be broadly used to explain the actions of all presidents at the time of an active draft. There are, however, few instances in which presidents took unilateral action in regard to conscription. Presidents have largely followed the action of Congress when they drafted and passed bills regarding conscription. The Two Presidencies Thesis has been used to explain the deference of Congress to presidents in matters of foreign policy, but conscription largely remains an example of Congress leading the action. While there are some noted exceptions (such as President Nixon, President Ford, and President Carter), presidents have mostly followed Congress rather than take an outward stance regarding conscription.

These theories provide a framework of analysis upon this chosen case. Conscription became a familiar military policy over time since it was used in all of America’s wars from the American Civil War to the Vietnam War. While the conscription laws differed in some details, their overarching structure remained unchanged over time. Presidents, overall, have waited for the Congress to favorably vote upon conscription before they have taken any action of their own. Even as the arguments of support and opposition remained similar in tone over time, these statements did little to change the structure or nature of conscription in the United States.
Despite unrest and resistance against conscription, the presidents signed conscription bills, remarked on the importance of conscription, and made pleas to America’s men to comply with these policies.
THE AMERICAN PRESIDENT AND CONSCRIPTION: CASE STUDIES

This section examines each of America’s wars as case studies to expose the actions of the Congress and president. During each conflict, and even during times of peace, the Congress passed a conscription bill that was then signed by the president. Presidents issued presidential proclamations and executive orders regarding these conscription laws. As shown, the presidents overall were supportive of conscription. While some presidents uttered sentiments to alter and adjust conscription for the sake of fairness, conscription remained the preferred method of manpower procurement between 1863 and 1973. Even President Nixon’s intended call to abolish conscription was short lived since he ultimately called for the extension of conscription for an additional two years. This section highlights the complexities of dealing with civil war and foreign conflict while faced with a small standing military. While there have been some silent presidents, presidents mainly voiced support for compliance and their intentions of enforcement. President Carter, in a stark contrast with previous presidents, called for Congress to resume registration as he also called for the registration of women. These cases further illustrate the importance of conscription as a military policy once the militia system was abandoned in 1862 since federal conscription remained consistent in design and application until 1973.

American Civil War

Unlike earlier conflicts, the American Civil War posed the greatest crisis to muster in a sizable force to continue the fighting. Despite the calls for volunteers, the Congress passed the Militia Act of 1862 to allow the state governors to use militiamen forces toward their federally
mandated state quotas. This act permitted President Abraham Lincoln to make decisions regarding the use and deployment of militia forces.\textsuperscript{20} Since militiamen were now designated under federal direction, each state was now required to submit a designated quota of men for the Union military based on their state’s population. Previous restrictions had limited terms of service between three to six-month terms, however, this new act allowed President Lincoln to require militiamen to serve for up to nine-month terms. This law further permitted the acceptance of up to 100,000 militiamen for federal service. This effort, however, was ineffective in raising the necessary totals of troops required for the war effort. As officials within the US War Department and politicians quickly realized, this method of using militiamen to supplement low troop totals was no longer viable after 1862. Despite these efforts to encourage voluntary enlistment, Lincoln called for an additional 300,000 militiamen on August 4, 1862. While many politicians were optimistic that this system would solve the issue, this initial system only raised between 60,000 and 70,000 men.\textsuperscript{21}

Members of the Congress were mainly divided for ideological reasons on whether to support federal conscription. American historians agree that the efforts to create a federal system of conscription resulted from the Confederate States of America’s federal system of conscription that had been approved in 1862. Republicans mainly argued that the Congress, through this new proposed plan of a federal system of conscription, had the power to employ various means to wage war. Conscription, according to these supporters, created a democratic method of selection

\textsuperscript{20} \textit{US Congressional Globe.} 37\textsuperscript{th} US Congress. Sess. II, Chapter 200 and 201, Chapter CCL, An Act to amend the Act calling forth the Militia to execute the Laws of the Union, suppress Insurrection, and repel Invasions. July 17, 1862.

\textsuperscript{21} Eugene Murdock wrote, “[t]he July 2 and August 4 calls, 300,000 three-year volunteers, and 300,000 nine-month militiamen were eventually raised” (Murdock 1971, 7).
and enrollment of men for the Union military. Opponents of conscription, however, viewed conscription as effort to expand the power of the Congress as it limited personal liberty of the conscripted man. Federal conscription, from this opposing perspective, violated individual liberty since it eliminated ability for a man to make a choice to enlist in the military. Democrats believed Congress had the ability to raise and supply armies since these powers were granted in the Constitution by using existing methods of manpower procurement. Despite these powers in the Constitution, conscription’s opponents believed the existing militia system was the only permissible way to increase the size of the standing military. Even considering these ideological divisions and debates among members of Congress, the Enrollment Act passed and was signed by Lincoln on March 3, 1863.

A week after the implementation of the Enrollment Act, President Abraham Lincoln issued a proclamation regarding the soldiers that had since left the military. Lincoln ordered “that all soldiers enlisted or drafted in the service of the United States now absent from their regiments without leave shall forthwith return to their respective regiments.” These soldiers, given the deadline of April 1, 1863, were to return to their units without facing any punishment for their absences. Lincoln’s proclamation further addressed those “evil-disposed and disloyal persons at sundry places” that “enticed and procured soldiers to desert and absent themselves from their regiments.” Lincoln believed these individuals further weakened the Union’s war effort, but these actions further provided aid to the Confederate cause. These actions to subvert the strength of the Union military, in Lincoln’s view, established “increased hardships and

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22 Abraham Lincoln, 1863. Recalling Soldiers to their Regiments, Proclamation.
23 Abraham Lincoln, 1863. Recalling Soldiers to their Regiments, Proclamation.
danger.”

Lincoln made a plea for “all patriotic and faithful citizens to oppose and resist the aforementioned dangerous and treasonable crimes” since Lincoln called for Americans to “support the proper authorities in the prosecution and punishment of offenders against said act [Enrollment Act] and in suppressing the insurrection and rebellion.”

President Lincoln issued four more calls for volunteers between June 1863 and December 1864. Conscription calls were placed throughout the Union districts with low troop enlistment. Districts would be spared from a conscription call if enough men had joined or remained in the military. In June 1863, Lincoln called for 100,000 militiamen from the states of Maryland, Pennsylvania, Ohio, and West Virginia. These militiamen, called for a six-month term of service, were being federalized by President Lincoln. Once brought into active service, these four states would receive credit under the Enrollment Act for filling their mandated quotas.

According to Lincoln’s proclamation, these men would be used for infantry, artillery, and cavalry. These men would “be organized according to the rules and regulations of the volunteer service and such orders as may hereafter be issued.”

In October 1863, Lincoln issued another proclamation calling for another 300,000 volunteers. Unlike his previous proclamation, militiamen were not being federalized in this call. This proclamation, Proclamation 107, called “upon the governors of the different States to raise and have enlisted into the United States service for the various companies and regiments in the field from their respective States their quotas of 300,000 men.” Lincoln indicated that the next draft call would commence on January

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24 Abraham Lincoln, 1863. Recalling Soldiers to their Regiments, Proclamation.
25 Abraham Lincoln, 1863. Recalling Soldiers to their Regiments, Proclamation.
26 Abraham Lincoln, 1863. Call for 100,000 Militia to Serve for Six Months, Proclamation 102.
27 Abraham Lincoln, 1863. Call for 100,000 Militia to Serve for Six Months, Proclamation 102.
28 Abraham Lincoln, 1863. Call for 100,000 Militia to Serve for Six Months, Proclamation 102.
5, 1864 for those districts that provided insufficient numbers. Proclamation 107, according to Lincoln, would not “interfere with existing orders, or those which may be issued, for the present draft in the States where it is not in progress or where it has not yet commenced.” As with the earlier act, Lincoln made a plea for compliance of the law. Lincoln called for those to provide “willing, cheerful, and effective aid to the measures thus adopted.”

By the summer months of 1864, the Congress responded to the Union’s military troubles with a new law. This law, An Act to Regulate and Provide for the Enrolling and Calling Out the National Forces and for Other Purposes, allowed Lincoln to make further calls for volunteers for terms of service ranging from one to three years. Initial calls for volunteers were for terms of six months, but now men would be required to serve longer terms of service. Proclamation 116 indicated that this new act would give Congress the responsibility of “recruiting and keeping up the strength of the armies in the field, for garrisons, and such military operations as may be required for the purpose of suppressing the rebellion and restoring the authority of the United States government.” As with the earlier acts, districts were to receive credit for all men that had entered military service. Districts would be spared from a draft call if they mustered in the requisite number of troops. Proclamation 116 requested another 500,000 volunteers for service. By December 1864, Lincoln issued Proclamation 121 that served as a call for 300,000 more volunteers. The previous call for 500,000 had been adjusted to 280,000. Because of this adjustment, the United States War Department needed to compensate for the current deficiency of 260,000 men. This call sought to fill the deficiency while also adding 40,000 more men into

29 Abraham Lincoln, 1863. Call for 300,000 Volunteers, Proclamation 107.
30 Abraham Lincoln, 1863. Call for 300,000 Volunteers, Proclamation 107.
31 Abraham Lincoln, 1863. Calling for 500,000 Volunteers, Proclamation 116.
32 Abraham Lincoln, 1864. Calling for 300,000 Volunteers, Proclamation 121.
military service. This proclamation, like Proclamation 116, required the service of men for terms of one, two or three years. As with earlier acts, districts were be spared from a draft if enough men had been mustered into service.

These proclamations show the challenges to maintain a sizable military to fight the war. Federal conscription, thought to solve issues regarding the proper size of the military, created a federally maintained military force. Federalization of militia and the further calls for volunteers expose issues in maintaining a sizable military force. Several of the proclamations attribute the dwindling size of the military to combat deaths. Lincoln’s final proclamation during the American Civil War, Proclamation 124, sought to address the continued problem with desertion.

A week after the issuance of the Enrollment Act in 1863, Lincoln called for deserters to rejoin the Union military. In March 1865, Lincoln made another call for deserters to return to active service. The Enrollment Act had been amended to include provisions regarding citizenship. The amended law included new punishments for those that violated the law, which would result in a man’s loss of citizenship. Proclamation 124 addressed this new provision to punish deserters by noting how they “voluntarily relinquished and forfeited their rights of citizenship and their right to become citizens.”

In order to encourage men to return to active service, Lincoln offered clemency for deserters if they returned to active service by May 10, 1865. Men remained free from punishment provided they “return to their regiments and companies or to such other organizations as they may be assigned to and serve the remainder of their original terms of enlistment and in addition thereto a period equal to the time lost by desertion.”

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33 Abraham Lincoln, 1865. Offering Pardon to Deserters, Proclamation 124.
34 Abraham Lincoln, 1863. Call for 300,000 Volunteers, Proclamation 107.
pardon, these men were absolved of punishment for their desertion as it also removed the
negative stigma for desertion.

Following its use in the American Civil War, James Oakes (the organizer of the Union’s
conscription system) offered suggestions to improve and alter conscription to prevent resistance.
Despite implementing many of his suggestions, resistance still occurred when conscription was
used to amass a large standing military during World War I. One of the key changes to
modernize conscription, when used during World War I, was self-registration. Unlike the
American Civil War, men were now required to register themselves rather than be registered by
the military’s provost marshals. To further remove the involvement of the military in this
process, local draft boards were created and maintained by civilians. For Oakes, these changes
were expected to usher in drastic results and acceptance of conscription since this eliminated the
role of the military as being involved in conscription policies.

**World War I**

The United States needed to quickly assemble a military force for this conflict once they
formally entered World War I. As a response to American involvement in this conflict, the size
of the American military drastically expanded on May 18, 1917. The passage of H. R. 3545: “An
Act to authorize the President to increase temporarily the Military Establishment of the United
States” ushered in another federal system of conscription. This act rested on “the existing
emergency, which demands the raising of troops in addition to those now available.”\(^{35}\) President
Woodrow Wilson was authorized to “raise by draft as herein provided, organize, and equip an
additional force of five hundred thousand enlisted men, or such part or parts thereof as he may at

\(^{35}\) H. R. 3545: *An Act to authorize the President to Increase Temporarily the Military Establishment of the United States*, 65\(^{th}\) Congress, 1\(^{st}\) Session, Chapter 15, Public, No. 12, May 18, 1917.
any time deem necessary.” This law additionally detailed the punishments for failure to comply with the law. Roughly 20% of those aged eighteen to forty-five, a total of 3,893,340 men, were inducted into military service at this time (Keene, 2006, 33). Of this draft eligible age group, 2,810,296 of this total of men were drafted (Keene, 2006, 33).

As in the case of the American Civil War, conscription was implemented as a solution for the military needs of the United States. At this time, the size of the standing military was less than 300,000 total enlisted officers and men. In his speech to advocate for a formal declaration of war, President Wilson said,

[the fighting] will involve the immediate addition to the armed forces of the United States already provided for by law in case of war at least five hundred thousand men, who should, in my opinion, by chosen upon the principle of universal liability to service, and also the authorization of subsequent additional increments of equal force so soon as they may be needed and can be handled in training.

The Congress voted 82 to 6 in the Senate and 373 to 50 in the House in support of a formal declaration of war upon Germany.

36 H. R. 3545: An Act to authorize the President to Increase Temporarily the Military Establishment of the United States, 65th Congress, 1st Session, Chapter 15, Public, No. 12, May 18, 1917.
37 Section six outlined punishment for, “Any person charged as herein provided with the duty of carrying into effect any of the provisions of this Act or the regulations made or directions given thereunder who shall fail or neglect to perform such duty; and any person charged with such duty or having and exercising any authority under said Act, regulations, or directions, who shall knowingly make or be a party to the making of any false or incorrect registration, physical examination, exemption, enlistment, enrollment, or muster; and any person who shall make or be a party to the making of any false statement or certificate as to the fitness or liability of himself or any other person for service under the provisions of this Act, or regulations made by the President thereunder, or otherwise evades or aids another to evade the requirements of this Act or of said regulations, and who, in any manner, shall fail or neglect fully to perform any duty required of him in the execution of this Act, shall, if not subject to military law, be guilty of a misdemeanor, and upon conviction in the district court of the United States having jurisdiction, thereof, be punished by imprisonment for not more than one year, or, if subject to military law, shall be tried by court martial and suffer such punishment as a court-martial may direct,” H. R. 3545.
38 72% of the American fighting force was drafted.
As voluntary enlistment had again declined, the Congress responded with another conscription bill to initiate another federally controlled system of conscription. Republican Representative Julius Kahn introduced the Selective Service Act, which implemented a series of conscription calls. A conscription call, and registration for conscription, was set by the Congress and president. This conscription act also designated the age range for registration, and set deferments that would excuse certain men from service. It eliminated the usage of substitutes and the payment of a commutation fee, which had been allowed under the Enrollment Act during the American Civil War. In an effort of fairness, these such provisions were eliminated when the new conscription law was used during World War I.

The members of Congress, that supported conscription, expressed their belief that men were required to serve the nation in times of need. They additionally expressed a desire to ensure a plan was in place to ensure they mustered in the proper amount of men for the war effort rather than rely on volunteerism. Representative Frederick Lehlback (R-NJ) explained, “the liability of all to serve in time of national danger is indisputable. It is, of course, not intended to compel anyone to serve for whom any reasonable excuse exists for remaining at home.” Lehlback further argued, “there exists no reason why the burden of fighting the war should rest solely on those who realize their duty in the premises and not as well upon those to whom their duty must be pointed out.” In echoing a similar sentiment, Representative John Rogers (R-MA) stated, “a man is told exactly what his ‘bit’ is. If he is not called upon for service, he can continue his vocation with the assurance that no stigma or odium attaches to him-

\[40\] Representative Frederick Lehlback, speaking on Universal Military Training; Extension of Remarks, 65th Cong., 1st sess., Congressional Record (April 16, 1917): HR 77.
\[41\] Representative Frederick Lehlback, speaking on Universal Military Training; Extension of Remarks, 65th Cong., 1st sess., Congressional Record (April 16, 1917): HR 77.
that if the Government wants him it will call him, and that so long as it does not call him he is doing the proper thing to stay where he is.”

In addressing the issue of a volunteer force and the responsibilities of America’s men, Representative William Borland (D-MO) noted the limitations of relying on volunteerism. As he explained, “it leaves a great many men at home who ought to be serving their country at the front.” In his view, “democracy demands that where there is an equality of right and opportunity there is also equality of duty and responsibilities. It is the duty of Congress to see that this equality is enforced by effective legislation.”

Representative Dudley Doolittle (D-KS) argued, “in a land of equal opportunity and favor there shall also be equal liability and equal obligation resting upon one and all alike when the Nation needs its sons on the battle field [sic]. Selective conscription, as defined by the President, the Commander in Chief of the Army and Navy, is not a last alternative; it is a first choice.”

Opponents to conscription expressed concern with the growing expanse of the military and extensions beyond the powers of Congress. In using letters from unions from within his district, Representative Isaac Sherwood (D-OH) voiced his opposition to conscription. Sherwood used testimonials from the Machinist Union and the Glass Workers Union of Toledo, Ohio. As Sherwood indicated, the testimonial from the Glass Workers Union was further

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supported by a letter from a Union veteran from the American Civil War. These fears, evidenced in the letters sent to Sherwood, touched upon potential fears to “establish military autocracy” and the infringement of states to make decisions regarding militias and training by requiring federal service.\textsuperscript{47} David Hollingsworth (R-OH) also voiced concerns regarding conscription since he viewed this a measure to encourage militarism within American society. Hollingsworth said, “I would rather resign and let the people back home send to Washington a more subservient tool of militarism.”\textsuperscript{48} In his view, conscription and the amass of a large standing military represented “the end of free institutions in America, destructive of that form of government which Lincoln in his inspired words at Gettysburg said our forefathers had brought forth on this continent and which he and other sturdy, unflinching American patriots have ever since maintained without foreign cooperation or entanglements.”\textsuperscript{49}

Based on the contents of the act, this act was important to respond with “the existing emergency, which demands the raising of troops in addition to those now available.”\textsuperscript{50} President Woodrow Wilson supported the measure, and signed the bill into law on May 18, 1917. Wilson, fearful of resistance against this policy, ordered that this measure be called Selective Service rather than conscription. Wilson believed the term ‘conscription’ bore such a negative connotation, which would cause resistance. Despite the change in terminology, Americans resisted against conscription during this conflict. Even after his order to refrain from using the

\textsuperscript{47} Representative Isaac Sherwood, speaking on Resolution Against Conscription: Extension of Remarks, 65\textsuperscript{th} Cong., 1st sess., Congressional Record (April 27, 1917): HR: 113.
\textsuperscript{48} Representative David Hollingsworth, speaking on Increase of the Military Establishment: Extension of Remarks, 65\textsuperscript{th} Cong., 1st sess., Congressional Record (April 28, 1917): HR: 155.
\textsuperscript{49} Representative David Hollingsworth, speaking on Increase of the Military Establishment: Extension of Remarks, 65\textsuperscript{th} Cong., 1st sess., Congressional Record (April 28, 1917): HR: 155.
\textsuperscript{50} H.R. 3545
term ‘conscription,’ Wilson issued a proclamation titled ‘conscription’ to inform Americans of the military policy.

President Wilson issued a proclamation on May 18, 1917. This proclamation, Proclamation 1370, outlined the requirements of self-registration of men, the penalties for those that did not register, and the penalties for men that committed fraud. Much like President Lincoln’s call for assistance from the states’ governors, President Wilson made a similar plea for cooperation. Wilson’s proclamation noted that governors were liable to contribute to the success of Selective Service. President Wilson, similar to President Lincoln, made pleas to a man’s patriotism. Both of these presidents used patriotism as a measure to determine the loyalty and obedience of men to comply or support this military policy. Wilson took this idea a step farther to discuss how compliance for this military policy illustrated how the United States then emerged as “the whole nation [as] an army.”51 Wilson briefly mentioned the concerns of heightened militarization in Europe, and how these nations were fighting a total war. As Wilson explained, “there are no armies in this struggle, there are entire nations armed.”52 This notion was further expounded upon when Wilson explained, “the men who remain to till the soil and man the factories are no less a part of the army that is in France than the men beneath the battle flags.”53 In order to ensure the success of the Allies, Wilson wrote, “all must pursue one purpose. The Nation needs all men, but it needs each man, not in the field that will most pleasure him, but in

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51 Woodrow Wilson, 1917. Conscription, Proclamation 1370.
52 Woodrow Wilson, 1917. Conscription, Proclamation 1370.
53 Woodrow Wilson, 1917. Conscription, Proclamation 1370.
the endeavor that will best serve the common good.”\textsuperscript{54} The United States, in this sense, needed to function like a “team,” thus allowing men to “play the part for which he is best fitted.”\textsuperscript{55}

This effort to place men in their proper roles, according to Wilson, would be through the legislation of the Congress. “Congress,” as Wilson noted, “has provided that the Nation shall be organized for war by selection, that each man shall be classified for service in the place to which it shall best serve the general good to call him.”\textsuperscript{56} While conscription was not new, Wilson explained that this moment was significant for the United States since “it is a new manner of accepting and vitalizing our duty to give ourselves with thoughtful devotion to the common purpose of us all” since “it is in no sense a conscription of the unwilling” because this represented “selection from a Nation which has volunteered.”\textsuperscript{57} For Wilson, this signified “the day which the manhood of the country shall step forward in one solid rank in defense of the ideals to which this Nation is consecrated” since it was vital “that there be no gaps in the ranks.”\textsuperscript{58}

The day of registration for those men eligible based on age, denoted the importance of participation of America’s men. Wilson detailed this day for its “significance” as he stressed the “honor” of this day for the United States.\textsuperscript{59} Wilson referred to registration day “as a great day of patriotic devotion and obligation” for America’s men.\textsuperscript{60} Registration was called a man’s “duty.”\textsuperscript{61} All Americans, however, were expected to participate. As Wilson explained, “whether

\textsuperscript{54} Woodrow Wilson, 1917. Conscription, Proclamation 1370.
\textsuperscript{55} Woodrow Wilson, 1917. Conscription, Proclamation 1370.
\textsuperscript{56} Woodrow Wilson, 1917. Conscription, Proclamation 1370.
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\textsuperscript{58} Woodrow Wilson, 1917. Conscription, Proclamation 1370.
\textsuperscript{59} Woodrow Wilson, 1917. Conscription, Proclamation 1370.
\textsuperscript{60} Woodrow Wilson, 1917. Conscription, Proclamation 1370.
\textsuperscript{61} Woodrow Wilson, 1917. Conscription, Proclamation 1370.
he is himself to be registered or not, to see to it that the name of every male person of the
designated ages is written on the lists of honor.” This is similar in nature to President Lincoln’s
call for compliance since Lincoln also cautioned against Americans that impeded this military
policy. Lincoln and Wilson both expressed fear of disobedience as a disruption to the proper
operation of military conscription. Lincoln and Wilson also similarly highlighted the
consequences for disobedience. Lincoln and Wilson, in understanding the importance of their
role as commander in chief, knew of importance of conscription as a military policy to allow for
the quick buildup of American military forces.

**World War II**

Even before the formal declaration of war, the Congress passed the first peacetime draft.
On September 16, 1940, the Selective Training and Service Act of 1940 required the registration
of all men between the ages of twenty-one and forty-five. In its first year, 900,000 men were
authorized for conscription. Those selection from among the registrants were required to serve
one year in the American military, but these terms of service were extended to the entire duration
of the fighting once war was formally declared. Conscription did not become a partisan issue in
1940 since Republicans (most notably Republican presidential candidate Wendell Wilkie)
supported conscription. Average Americans questioned the use of conscription during
peacetime. Despite the apprehension of average Americans to support conscription, Congress
supported the extension of the Selective Training and Service Act for an additional year through
a one-vote margin in the House of Representatives.

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The Selective Training Act, also called the Burke-Wadsworth Act, was introduced in the Senate by Senator Edward Burke (D-NE) and Senator James Wadsworth (R-NY). At the behest of President Franklin Roosevelt, these senators drafted legislation to address manpower limitations of the nation in the absence of declared war. This act passed the Senate on August 28, 1940, and passed the House on September 7, 1940. Roosevelt signed this act into law on September 16, 1940. According to the act, its purpose was to “increase and train the personnel of the armed forces of the United States.”

To address criticism regarding a formal declaration of war, this act noted, “the President is authorized from time to time, whether or not a state of war exists, to select and induct into the land and naval forces of the United States for training and service, in the manner provided in this Act, such number of men as in his judgement is required.”

According to the act, active times of war allow the military to increase in size to reach the capacity of at least 900,000 men. This act noted the “duty” of men to comply to this act through registration with Selective Service as a requirement of citizenship.

Representative Harry Sheppard (D-CA), echoed the sentiments of preparedness as he used a letter from a local newspaper to express his thoughts of support of conscription. According to the article, conscription represented “being ready when our services are needed. We may never have to use these services, but there can be no danger in preparing.”

Representative Carey Kefauver (D-TN) referenced a letter written by a veteran of World War I that mirrored the same sentiments of preparedness. This letter indicated a fear that the United

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63 S. 4164: An Act to provide for the common defense by increasing the personnel of the armed forces of the United States and providing for its training. 76th Congress, 3rd Session, Chapter 729, Public No. 783, September 16, 1940.
64 S. 4164
65 S. 4164
States was not ready to face large standing militaries if the United States remained reliant on volunteerism.\textsuperscript{67} To address issues of religion, Representative John Delaney (D-NY) submitted a letter by Reverend John Gorman in support of conscription. According to the letter by Reverend Gorman, “fear that the proposed conscription will lead to aggression on our part is less risky than the fear that we may not be prepared to preserve our liberties and form of government if we are suddenly attacked and found unprepared.”\textsuperscript{68}

Senator Edward Burke (D-NE) argued, “it is upon the solid premise that the duty of defending our free institutions rests not alone upon the eager patriot who is ready to make every sacrifice that he may be prepared to protect his country; it is an obligation that bears with equal weight upon every male citizen.”\textsuperscript{69} Senator James Byrnes (D-SC) explained that preparedness was vital to the nation, but also vital to the soldiers themselves. According to Byrnes, “sending untrained boys, with or without modern armored, motorized, and mechanized implements of war, against such specialists as Hitler has in such machines, is just like sending naked Indians in canoes, armed with bows and arrows, out against a first-class battleship.”\textsuperscript{70} Senator Joseph Guffey (D-PA) said, “conscription is not something we want. It is something forced upon us by world events. Most American realize that, as the Gallup polls show. Most Americans

\textsuperscript{67} Representative Carey Kefauver, speaking on Compulsory Military Service: Extension of Remarks, 76th Cong., 3\textsuperscript{rd} sess., Congressional Record (August 19, 1940): HR: 5079.
\textsuperscript{68} Representative John Delaney, speaking on Concription: Extension of Remarks, 76th Cong., 3\textsuperscript{rd} sess., Congressional Record (August 21, 1940): HR: 5139.
\textsuperscript{69} Senator Edward Burke, speaking on Selective Military Training: Extension of Remarks, 76th Cong., 3\textsuperscript{rd} sess., Congressional Record (August 21, 1940): S: 5151.
\textsuperscript{70} Senator James Byrnes, speaking on Selective Service Right Now: Extension of Remarks, 76th Cong., 3\textsuperscript{rd} sess., Congressional Record (August 24, 1940): S: 5215.
understand that conscription is both the most efficient and most democratic way of building an army – in time.”\textsuperscript{71}

Representative Robert Secrest (D-OH) expressed his opposition with conscription since the United States was not in a period of declared war. Secrest said, “we must not surrender to panic or hysteria” since “Congress should be careful not to destroy any part of the old American tradition of free choice unless there is no other way to meet the present emergency.”\textsuperscript{72} Representative Lewis Thill (R-WI) submitted a speech by Danial Webster (an opponent to conscription in 1814), which focused on the limits of government to require mandatory military service. Representative John Schafer (R-WI) cautioned against conscription as he also cautioned against the New Deal being used “to establish a dictatorship in the United States.”\textsuperscript{73} In Schafer’s view, conscription “in a democracy in time of peace in indefensible.”\textsuperscript{74} Senator Guy Gillette suggested the Congress should “aim at a highly mechanized force instead of the old mass army, and should see what a sensible volunteering campaign will do.”\textsuperscript{75}

Representative Martin Sweeney (D-OH) used his floor time to discuss an article published in the \textit{Washington Times-Herald}. This article described those opposed to conscription as “Nazi, anti-British, Communist sources.”\textsuperscript{76} Representative Stephen Bolles (R-WI) highlighted

\begin{itemize}
\item \textsuperscript{71} Senator Joseph Guffey, speaking on Conscription: Extension of Remarks, 76th Cong., 3\textsuperscript{rd} sess., Congressional Record (August 27, 1940): S: 5278.
\item \textsuperscript{72} Representative Robert Secrest, speaking on Conscription: Extension of Remarks, 76th Cong., 3\textsuperscript{rd} sess., Congressional Record (August 6, 1940): HR:4816.
\item \textsuperscript{73} Representative John Schafer speaking on The National Catholic Welfare Conference Opposes Compulsory Military Service: Extension of Remarks, 76th Cong., 3\textsuperscript{rd} sess., Congressional Record (August 13, 1940): HR:4973.
\item \textsuperscript{74} Ibid., Representative Schafer further read remarks of opposition from the Catholic Welfare Conference to further demonstrate the opposition to conscription at this time.
\item \textsuperscript{75} Senator Guy Gillette, speaking on Conscription: Extension of Remarks, 76th Cong., 3\textsuperscript{rd} sess., Congressional Record (August 13, 1940): S: 4987.
\item \textsuperscript{76} Representative Martin Sweeney, speaking on Opponents of Conscription Classified as Pro-Nazi “Bundite” Isolationists by Authors of Washington Merry-Go-Round, 76th Cong., 3\textsuperscript{rd} sess., Congressional Record (August 14, 1940): HR: 5003.
\end{itemize}
the opposition among members of various religious communities. In this conscription law, according to Bolles, conscription was a violation of religious freedom since it did not provide the same exemptions for members of the clergy. Bolles said, “every religious American should request his Senators and his Congressmen jealously to safeguard the rights of his constituents.”

Senator Rush Holt (D-WV) referenced a publication by the American Federation of Labor (AFL). In this document, the AFL cautioned against conscription since “conscription of an Army of millions of soldiers to be carried out at once is a wasteful and an extravagant proposal.” Representative Raymond Springer (R-IN) said, “many of our people are frightened because they see their liberty and freedom slowly vanishing.” Representative George Dondero (R-MI) submitted a letter from the Mothers of the United States of America to illustrate the fears regarding conscription. This organization indicated, “we are not opposed to the principle of military training, but we are against certain specific sections of the bill and the apparently cleverly planned regimentation of all of us under the European corporate-state plan.”

President Franklin Roosevelt, astutely aware of the escalation of tensions internationally, signed the legislation for America’s first peacetime draft. Roosevelt said, “a few weeks have seen great nations fall. We cannot remain indifferent to the philosophy of force now rampant in the world.” To put this into context, the Selective Training and Service Act of 1940 was signed in September 1940, which was more than a year before the attack upon Pearl Harbor. President

80 Representative George Dondero, speaking on Compulsory Military Training: Extension of Remarks, 76th Cong., 3rd sess., Congressional Record (September 3, 1940): 5409-5410.
81 Franklin D. Roosevelt, 1940. Selective Service Registration, Proclamation 2425.
Roosevelt issued Proclamation 2425 to detail the necessity of this peacetime draft. According to Roosevelt,

it is imperative to increase and train the personnel of the armed forces of the United States and that in a free society the obligations and privileges of military training and service should be shared generally in accordance with a fair and just system of selective compulsory military training and service.\(^\text{82}\)

One of the persisting criticisms of conscription was the fairness placed upon all eligible males. Its critics argued that Selective Service placed an unfair burden upon certain men within American society, which included minorities, those unable to attend college for career advancement, and those with less financial stability or security. In order to calm or reassure these critics, Roosevelt said, “the Congress has debated without partisanship and has now enacted a law establishing a selective method of augmenting our armed forces. This method is fair, it is sure, it is democratic – it is the will of our people.”\(^\text{83}\)

Roosevelt, like Lincoln and Wilson, called for the cooperation of the states’ governors. Roosevelt further asked for the assistance of employers to provide time for their workers to register. This registration, in Roosevelt’s view, represented “the first step, our young men will come from the factories and the fields, the cities and the town, to enroll their names on registration day.”\(^\text{84}\) Participation in this act, and the buildup of the United States military, represented the “spirit that the people of our country are assuming the burdens that now become necessary” since “there is both the opportunity and the need for many thousands to assist” in this call of service.\(^\text{85}\) For Roosevelt, this call to service represented America’s ability to use its “great potential strength to fend off war from our shores. We must and will prevent our land from

\(^{82}\) Franklin D. Roosevelt, 1940. Selective Service Registration, Proclamation 2425.
\(^{83}\) Franklin D. Roosevelt, 1940. Selective Service Registration, Proclamation 2425.
\(^{84}\) Franklin D. Roosevelt, 1940. Selective Service Registration, Proclamation 2425.
\(^{85}\) Franklin D. Roosevelt, 1940. Selective Service Registration, Proclamation 2425.
becoming a victim of aggression.” In reaffirming the importance of self-registration and participation of America’s male population, Roosevelt said, “may we all strengthen our resolve to hold high the torch of freedom in this darkening world so that our children and their children may not be robbed of their rightful inheritance.”

In October of 1940, weeks after the implementation of the peacetime draft, Roosevelt issued a message directed at America’s male population. This message, given on October 16, 1940, sought to highlight America’s “pressing need for a stronger defense, and its vital meaning” to America’s men. This message, brief in length, targeted America’s men toward compliance of the law. Roosevelt continued by explaining, “I would tell you that the task before us today is as compelling as any that ever confronted our people.” In a similar tone to that of Wilson, Roosevelt echoed these sentiments of a joint, community effort. As Roosevelt noted, “each of us must willingly do his bit if we are to hold fast our heritage of freedom and our American way of life.”

As with the selection process, it was unknown which men would be selected for service. This was a period when the older men would be selected first. This practice changed when conscription was used during the Vietnam War since the younger registrants were selected first from among the total pool of registrants. In addressing the selection process, Roosevelt said, “whether or not you are to be among those selected, I welcome you as one whose name has been inscribed on the roll of honor of those Americans ready.”

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86 Franklin D. Roosevelt, 1940. Selective Service Registration, Proclamation 2425.
87 Franklin D. Roosevelt, 1940. Selective Service Registration, Proclamation 2425.
88 Franklin D. Roosevelt, 1940. Message to Selective Service Registrants.
89 Franklin D. Roosevelt, 1940. Message to Selective Service Registrants.
90 Franklin D. Roosevelt, 1940. Message to Selective Service Registrants.
91 Franklin D. Roosevelt, 1940. Message to Selective Service Registrants.
By December 7, 1941, Selective Service continued to expand the size of the standing military. Roughly fifty million men, between the ages of eighteen and sixty-four, were registered with Selective Service. They screened eighteen million men, and drafted roughly ten million men between the ages of eighteen and thirty-eight into service. Another six million Americans volunteered between December 1941 and the early months of 1943 since the Navy and Marine Corps only accepted volunteers until this time. General Lewis Hersey, the director of Selective Service, wanted Selective Service to remain an autonomous agency rather than fall under supervision of the War Manpower Commission, which was created in April 1942. Much to the pleasure of General Hersey, Selective Service remained an autonomous agency.

As with earlier conscription laws, the Selective Training and Service Act of 1940 contained provisions for men to avoid service for assorted reasons. Deferments, or exemptions, were available for elected officials, those unhealthy or unfit for service, religious ministers, and those employed in industries deemed important by the federal government. One of the most complicated deferments would be for those classified as conscientious objectors. Conscientious objectors were defined as men that were morally or religiously opposed to warfare, which would prevent them from participating in the conflict. This deferment, difficult to obtain, required significant attention in this act.

Conscientious objector deferments were two-fold. A man could be placed into a non-combat role upon advisement of the officials in the local draft board. Otherwise, men were completely excused from participating in the war effort in any capacity. If the man was morally opposed to participate in the war (even in a non-combat role), the man could be assigned to perform another service to the federal government. A man could challenge a failed appeal for
conscientious objector status with their local draft board by filing proper appeal paperwork. Once the paperwork was received, it would be sent to the United States Department of Justice for review to reconsider each case individually. The man would attend a hearing by the Department of Justice to evaluate “the character and good faith of the objections of the person concerned.”92 Officials in the Justice Department would then determine if a man qualified for a non-combat role or was ordered to fill a job within a vital industry. The local draft board was then advised of the Justice Department’s recommendation for the man. Local draft boards made the final determination to classify the man, and were not bound to follow the recommendation of the Justice Department.

Most of the punishments rendered during this war were because of conscientious objectors. According to the Selective Training and Service Act, men were to “be punished by imprisonment for not more than five years or a fine of not more than $10,000 or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and on, conviction, shall suffer such punishment as a court martial.”93 Nearly ten million men received assorted deferments. Nearly five million men appealed their initial classifications. While 70,000 men received the contentious objector deferment, and 25,000 of these were assigned to non-combat roles. Roughly 6,000 men went to jail rather than complying with the Selective Service System.94 Many of these men were Jehovah’s Witnesses that were denied reassignment because of their religious beliefs. The Justice Department, however, did not

92 S. 4164.
93 S. 4164.
believe these men abhorred the use of force in every and all circumstances. In an act of defiance, these men chose to go to prison. The pursuit to punish conscientious objectors illustrates the government’s efforts to punish those that violated the law or those that did not comply with the law. While Roosevelt expressed adherence to conscription law, he did not explicitly make further statements regarding punishments for non-compliance.

The Korean War

Following the conclusion of World War II, the Congress further addressed mandatory service for America’s male population. In June of 1948, the Selective Service Act of 1948 was enacted. This act created the modern system of conscription to be used in the Korean War and the Vietnam War. As with earlier acts, men as young as eighteen were required to register. Unlike the earlier acts, this act did not place a cap to limit the registration of men based on age. During World War II, all men up to the age of sixty-four were required to register. The Selective Service Act of 1948 required the registration of men between the ages of nineteen and twenty-six as it also made them eligible for a twenty-one month term of military service. Men could then determine if they would serve an additional twelve months of active service or serve thirty-six months in the reserves. Under this act, men served a minimum of five years of service to the United States.95

Under this act, the Congress indicated they passed this act as a measure to provide for the “adequate armed strength” to “insure the security of this Nation” since within “a free society the

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obligations and privileges of serving in the armed forces and the reserve.” The Congress, according to this act, “shall determine the units and organizations” needed to provide for a military. This act outlined the training and service for men between the ages of eighteen and twenty-six. As with the earlier acts, the president was given the authority to summon men for conscription during formally declared war or during times of peace. Conscription was contingent upon the military needs of the time of a conscription call. The Secretary of Defense was also involved to make the determination of conscription calls and quotas.

As with earlier laws, this law contained penalties for noncompliance. Those that “knowingly fail or neglect to perform such duty” or those “charged with such duty” and fail to complete their task would be liable for punishment. Men that neglected to register with Selective Service, failed to report, or those that “knowingly counsels, aids, or abet another to refuse or evade registration or service” were equally liable for punishment. Men, that were eligible for conscription, could volunteer for military service rather than wait to be conscripted into service. Following World War II, budget constraints only allowed the selection of 100,000 men to be selected in 1948 under this new law.

Those in support of conscription believed this measure was imperative for national defense purposes. Senator Herbert O’Conor (D-MD) explained, “We believe it is the most

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96 S. 2655: An Act to provide for the common defense by increasing the strength of the armed forces of the United States, including the reserve components thereof, and for other purposes. 80th Congress. 2nd Session, Chapter 625, Public No. 759, June 24, 1948.
97 S. 2655: An Act to provide for the common defense by increasing the strength of the armed forces of the United States, including the reserve components thereof, and for other purposes. 80th Congress. 2nd Session, Chapter 625, Public No. 759, June 24, 1948.
98 S. 2655: An Act to provide for the common defense by increasing the strength of the armed forces of the United States, including the reserve components thereof, and for other purposes. 80th Congress. 2nd Session, Chapter 625, Public No. 759, June 24, 1948.
99 S. 2655.
effective and least expensive plan for national security in this perilous period that has yet been advanced.”

Representative William Stevenson (R-WI) used a letter written by the American Legion in La Crosse, Wisconsin to convey his support for conscription. This letter expressed support for universal training since “peace is worth striving for.”

Representative Lyndon Johnson (D-TX) said,

Defensive strength is a compound of many things. First, there must be a national consciousness of our danger, of the kind of world we live in; there must be a national determination to maintain our freedom – to foot the bill, pay the price, whatever it is. Next, there must be sound planning and whole-hearted cooperation by all the branches of government involved.

While supportive of conscription, Representative John Gwynne (R-IA) expressed concerns. For Gwynne, “the Nation will look to Iowa for the production of a large share of its food” and “it behooves the military not to ask for more personnel than it can use efficiently.”

In referencing the resolution by the National Guard Association of Massachusetts, Representative Angier Goodwin (R-MA) highlighted the strengths of the current bill and called for this peacetime draft. According to this resolution, for Goodwin,

there is justified fully such a program in the interest and necessity of our national security, and emphasizes the urgency of such a measure, places great responsibility on the people and the Congress for immediate passage of such an act as the fairest, most equitable, and most economical means of effecting our national security.

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100 Senator Herbert O’Conor, speaking on European Recovery Program and Universal Military Training, 80th Cong., 2nd sess., Congressional Record (February 2, 1948): S: A1536. O’Conor further explained, “The atomic bomb has not made mass armies obsolete. It had only made raw recruits obsolete,” A1536.
102 Representative Lyndon Johnson, speaking on National Security: Extension of Remarks, 80th Cong., 2nd sess., Congressional Record (March 15, 1948): HR: A1627. Representative Johnson, however, is listed as “present” rather than entered a vote on this piece of legislation.
Representative Leonard Hall (R-NY), in referencing a speech he had made to the Nassau Chapter Reserves Officers Association of the United States, echoed this sentiment since “civil defense thus becomes important for the first time. Delay in planning and organizing for a war emergency could be disastrous in a country such as ours, with its tremendous concentrations of population.”105 Hall further explained, “the peace-loving nation has no choice except to prepare for every type of surprise attack that might be launched against it.”106 In voicing support for conscription, Senator Robert Taft (R-OH) said, “We must realize that the main purpose of any foreign policy should be the freedom of the United States, and the second guiding policy should be the maintenance of peace.”107

Representative Albert Engel (R-MI) expressed his concerns with another peacetime draft since he felt it represented a costly expenditure to keep a sizable military force since the atomic bomb, in his view, made large scale troop deployments obsolete for future wars.108 Representative Willis Bradley (R-CA) read a resolution by the UAW-CIO (Chrysler) opposed to conscription that highlighted the excessive cost, their concern that American citizens “could be used at will to completely militarize our people and place labor under direct military control,” and their view of stronger commitment to “the United Nations to make it a real guaranty against World War III.”109 In a similar religious argument used to object the peacetime draft in 1940,

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religious sentiments were raised in 1948. In using a document written by bishops of the Methodist Church, Representative Robert Rich (R-PA) expressed concerns of creating and training a large standing military force. According to the concern by the bishops, they were “unanimously committed to the cause of peace by the elimination of the causes of war and the cultivation of international justice and good will.”

These efforts would include the “renunciation” of this military objective.

Representative Parke Banta (R-MO) used a letter from a mother in his district to express the opposition from among the American public. In this letter, Clara Hayes wrote, “these are merely the entering wedges of a scheme totally to mobilize and regiment America’s human and economic resources for an unlimited state of emergency and a third world war, and would end by saddling this country with a military despotism.”

Representative Daniel Reed (R-NY) used his time to address the “propaganda” that had been used to bombard America’s youth to support this military objective. In Reed’s view, “unless a free people refuses to be stampeded by the impact of false propaganda, the freedom which has made this the greatest Nation on the face of the earth will be lost.” Among his many concerns with this bill, Reed expressed the high cost, the loss of resources for other aspects of the United States, the danger of insufficient rapid training, and that research was expected to suffer if men were removed from certain positions for

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112 Representative Parke Banta, speaking on Peacetime Military Conscription, 80th Cong., 2nd sess., Congressional Record (April 14, 1948): HR: A2279.
service in the military. Similar to the concerns of Reed, Senator Elbert Thomas (D-UT) said, “forced training in a field in which is not interested may deaden the zeal of the selectee quite as much as contribute to his ultimate worth in the Army.”¹¹⁵

President Harry Truman issued Proclamation 2799 to address the registration process. Much like the earlier act used in World War I and World War II, this new conscription legislation required the self-registration of men. To make this requirement of self-registration more explicit, section 6 (k) of the law detailed registration as a requirement for all men since “no exception from registration, or exemption or deferment from training and service, under this title, shall continue after the cause therefore ceases to exist.”¹¹⁶ Unlike the earlier uses of conscription which limited self-registration to few specific days, the Selective Service Act of 1948 had a much more elaborate listing of days for registration. This series of days, based upon a series of dates in which a man was born, consisted of ten days of continued registration of men. Men were to follow the proscribed schedule, and register themselves at their local board depending on their date of birth. Each of these ten categories of birthdate ranges then had two separate days of registration for men. For example, men born before September 19, 1930 should have registered on September 17, 1948 or September 18, 1948.

Similar to the proclamations by Wilson and Roosevelt, Truman cautioned men to familiarize themselves with the law to understand its requirements. Truman also called for employers and state governors to assist with the ease of registration. The multiple days of registration was intended to help ease the operation of conscription. According to this

proclamation, if a man was unable to register due to “circumstances beyond his control” the man was then expected to register “as soon as possible after the cause for such inability ceases to exist.” Unlike the proclamations by Lincoln, Wilson, and Roosevelt, Truman’s was devoid of any language regarding patriotism, duty, and the magnitude of importance of compliance. Truman’s proclamation set a different tone since his proclamation was primarily a summation of the law. Unlike the other presidents, Truman’s proclamation does not impart any personal sentiments regarding the importance of service, building American forces, or the responsibility of America’s men to preserve the American way of life.

The outbreak of the Korean War soon required a new solution to muster in the requisite men needed for the war effort. Rather than use existing law, the Universal Military Training and Service Act of 1951 altered some conditions of the Selective Service Act of 1948. One of the major adjustments was the selection of men as young as 18½, but it also increased the length of service from twenty-one months to twenty-four months. Men, under the amended act, were required to serve eight years. As with earlier acts, some men were eligible for certain deferments.

Aside from the change in age range, the Universal Military Training and Service Act of 1951 had other significant amendments. According to this act, registrants would “be immediately liable for classification and examination” since it was essential to determine those available for military service based on physical and mental capabilities. Those men that reached the age of twenty-six would still be liable for service in the National Security Training

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118 S. 1: 1951 Amendments to the Universal Military Training and Service Act. 82nd Congress, 1st Session, Chapter 144, Public No. 51, June 19, 1951.
Corps or the American military. This law outlined the size of each branch of the military while noting the use of this law to maintain the strength of the American military. Presidents maintained their authority to induct men into the military as they deemed appropriate during times of war or peace. The Secretary of Defense and Secretary of the Treasury also served roles to determine what was “essential to the public and personal health” of each qualified man.\textsuperscript{119} The president, under advisement of the Secretary of Defense, was also authorized to decrease the size of the military “in the light of international conditions” or during “a lesser period of time than can be economically utilized.”\textsuperscript{120}

This law also created the National Security Training Commission. The Commission, as it was called in the law, consisted of three civilians and two active or retired members of the American military. This Commission was not allowed to be dominated by one political party, and were appointed by the president with the confirmation by the Senate. Members of the Commission were to advise the president upon matters of training, but were also expected to create policies and procedures for the maintenance of the American military. The Commission was responsible for accounting for “adequate provisions for the moral and spiritual welfare” of the military’s training, but was also required to follow the proscribed rules and regulations for the American military.\textsuperscript{121} Upon making their decisions regarding the training procedure, the Secretary of Defense was expected to review all recommendations to decide upon implementation. All policy changes were then subject to approval of the Secretary of Defense.

\textsuperscript{119} S. 1: 1951 Amendments to the Universal Military Training and Service Act. 82nd Congress, 1st Session, Chapter 144, Public No. 51, June 19, 1951.
\textsuperscript{120} S. 1: 1951 Amendments to the Universal Military Training and Service Act. 82nd Congress, 1st Session, Chapter 144, Public No. 51, June 19, 1951.
\textsuperscript{121} S. 1: 1951 Amendments to the Universal Military Training and Service Act. 82nd Congress, 1st Session, Chapter 144, Public No. 51, June 19, 1951.
As with earlier laws, this law encouraged voluntary enlistment. Dating back to the American Civil War, military officials believed the implementation of mandatory conscription would encourage men to voluntarily enlist. While this did happen in some cases, the threat of a conscription call did not encourage most men toward voluntary enlistment. The Korean War was the first conflict in which the size of the military grew because of voluntary enlistment. Unlike previous wars, the threat and fear of conscription encouraged men to enlist. One of the main reasons for this change would be the Reserve Forces Act of 1955.

The Reserve Forces Act of 1955 shortened the length of service for reservists to six years. The Ready Reserves could only be summoned by the president during times of national emergency. The Congress authorized the size of the Reserve force to expand to 250,000 men, but the Congress also restricted the authority of the president to summon the Reserves. The Reserves could then only be summoned during periods of emergency as deemed by the Congress. The president, however, was given more authority to fend off threats of Communism. Amid all these changes, President Dwight Eisenhower believed military expenditures had grown immensely, and should be halted. President Eisenhower then cut the cost of military expenditures related to the drilling of the Reserve forces. This move, in the view of the Congress, was dangerous since Reservist forces were based throughout the nation with little central control or oversight because of Eisenhower’s reductions. In 1959, the Congress responded by requiring presidents to seek Congressional approval regarding any further reductions or restrictions upon the American military.

George Flynn (1993) and Stephen Kohn (1986) address the most significant aspects of prosecutions. Flynn focuses on government institutions as they became the preserver of
conscription. These institutions then fostered questioning from American society, which resulted in resistance. This small percentage of discontented Americans were prosecuted by the Department of Justice. In a similar study, Kohn addresses the various means of resistance against conscription. For Kohn, evaders sought to refuse participation within a system that required their service for a war in which they disagreed. When forced to comply and threatened with punishment, according to Kohn, men respond negatively. Comparatively to other conflicts, 80,000 men were investigated for evasion during this time. This action by the Department of Justice illustrates its intention to punish these acts of lawless behavior.

**Vietnam War**

Voluntary enlistment had reached a new height due to the Korean War. Most men volunteered in order to select their branch of service rather than wait for selection by Selective Service. President Truman and President Eisenhower did not issue any proclamations regarding the American forces used for the Korean War. Nor did they issue proclamations that addressed conscription of the United States military during this time. President John F. Kennedy increased the size of the American military during his term in office, but did not issue proclamations regarding conscription. On March 28, 1963, President Kennedy signed Public Law 88-2. This law abolished the existing limit regarding the size of the armed forces, but also extended the Selective Service System for another four years (Rothenberg 1968, 14).\(^{122}\) By 1964, 16,835,000 men were eligible for military conscription. Of those draft eligible, 2,000,000 were classified as

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\(^{122}\) This Public Law stated, “Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That section 17 (c) of the Universal Military Training and Service Act, as amended (50 App. U.S.C. 467 (c)), is amended.” This is described as a “Draft Extension.” H.R. 2438: To extend the induction provisions of the Universal Military Training and Service Act, and for other purposes. 88th Congress, 1st Session, Public No. 88, March 28, 1963.
I-A (prime for induction), 12,800,000 had other deferments or were placed in ineligible categories (Flynn 1993, 168). By 1965, the size of the military increased to 2,655,000 (Flynn 1993, 170). By 1968, the number rose to 3.5 million (Flynn 1993, 170). At this point, draft inductees increased from 16,000 to 40,000 per month. Roughly 300,000 men would be conscripted annually until 1971 (Flynn 1993, 170-171).

On August 4, 1964, President Lyndon Johnson informed the American people that the USS Maddox was fired upon by North Vietnamese gunboats in the Gulf of Tonkin. Americans were told this attack was unprovoked, however, the actual sequence of events remained unclear and uncertain. As a response, the Gulf of Tonkin Resolution was passed unanimously in the House and passed in the Senate by a vote of 88 to 2. Despite support for military involvement from the Congress, the anti-war movement began to grow as they focused their message against the expansion and continued American involvement in Vietnam. Draft card burning became the “most visible and controversial” means of draft resistance (Kohn 1986, 76). In the view of resisters, these cards served as reminder that they were part of this system that conscripted men for service in this ongoing and unpopular war.

Many members of Congress publicly voiced their disdain and displeasure for those that burned their draft cards. Representative Mendel Rivers (D-SC) proposed an amendment to the existing conscription law to explicitly prohibit and criminalize card burning. The Universal Military Training Manual of 1951 previously contained provisions for punishments for anyone “who forges, alters, or in any manner changes any such certificate or any notation duly and

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123 The deferments and ineligible categories included: 2.3 million veterans, 2.8 million already in uniform, 4.9 million held educational jobs, 4.1 million were physically or mentally disqualified. The remaining young men had high school or college deferments, dependency deferments, or other job deferments (Flynn 1993, 170).
validly inscribed thereon.” The amendment altered the language to punish anyone “who
forges, alters, knowingly destroys, knowingly mutilates, or in any manner changes any such
certificate or any notation duly and validly inscribed thereon.” Representative William Bray
(R-IN) said, “the need of this legislation is clear. Beatniks and so-called ‘campus cults’ have
been publicly burning their draft cards to demonstrate their contempt for the United States and
our resistance to Communist takeovers.” Representative Gerald Ford, years before he became
president, also voiced his support to criminalize card burning and punish card burners.

Following the escalation of involvement in the Vietnam War and as a response to
resistance against conscription, President Lyndon Johnson issued Executive Order 11391 to alter
and amend Selective Service regulations. This order, issued on January 24, 1967, addressed
the mailing of registration and classification documents. Registration documents, for those men
living in a military post, Canada, Mexico, Alaska, Hawaii, Puerto Rico, the Virgin Islands,
Guam, or the Panama Canal Zone, were to be sent directly to the Director of Selective Service
rather than the closest local draft board. Johnson gave further instruction to the men living in
places other than the locations previously mentioned. Men living in these places were ordered to

124 The Universal Military Training Manual, Section 462 (b) (3) of Title 50, United States Code. The full section
stated, “Any person (1) who knowingly transfers or delivers to another, for the purpose of aiding or abetting the
making of any false identification or representation, any registration certificate, alien's certificate of nonresidence, or
any other certificate issued pursuant to or prescribed by the provisions of this title, or rules or regulations
promulgated hereunder; or (2) who, with intent that it be used for any purpose of false identification or
representation, has in his possession any such certificate not duly issued to him; or (3) who -forges, alters, or in any
manner changes any such certificate or any notation duly and validly inscribed thereon; or (4) who, with intent that
it be used for any purpose of false identification or representation, photographs, prints, or in any manner makes or
executes any engraving, photograph, print, or impression in the likeness of any such certificate, or any colorable
imitation thereof.” S. 1: 1951 Amendments to the Universal Military Training and Service Act. 82nd Congress, 1st
Session, Chapter 144, Public No. 51, June 19, 1951.
125 S. 1432: To amend the Universal Training and Service Act, and for other purposes. 90th Congress, 1st Session,
126 Representative William Bray, speaking on HR 10306, 89th Cong., 1st sess., Congressional Record (August 10,
notify local board regarding where they would prefer to receive their paperwork. Once the paperwork was completed, the registrant would then submit the paperwork within sixty days of receiving it. Johnson also addressed matters of classification for registrants. Registrants received their classification to their last known address, which was the address used on their registration form and questioner. If the man lived outside the above-mentioned locations, the Director of Selective Service was then responsible to send the classification notice. This provision removed this task from the local boards.

As with the earlier laws, members of Congress were divided on their support of this measure. Unlike the earlier laws under consideration, the Congress needed to grapple with the extension and modification of conscription when used during an unpopular, undeclared war. Representative Edward Roybal (D-CA) said,

Certainly we are united in full support of continuing our country’s vigorous search for ways to move this tragic conflict away from the battlefield and to the conference table – where we may have a chance to begin meaningful negotiations aimed at achieving equitable terms for a just settlement of the war in Vietnam. 128 Representative Frank Horton (R-NY) proposed changes to make conscription more equitable. As Horton explained, “While the public, through the Congress, has the right to take some years from the lives of healthy men for the defense of the nation, those young men have the right to demand a fair shake from the draft…and they are not getting it now.” 129 Representative Ray Roberts (D-TX) used a letter from a draft board chairman. Clarence Roberson, Jr. wrote, “Our board here cares not that you are rich or poor; that you are Democrat or Republican; that you are

Jew or Gentile. We go by the book and ‘salt and pepper’ into our decisions a lot of equality and compassion in this business of taking a young man from his home and family.”

Representative Donald Fraser (D-MN) referenced an article printed in the *Minneapolis Star.* This article did question the change to the youngest first selection, but did suggest “a system of random selection in which everyone, and every group, will have an equal chance of being drawn.”

Representative Paul Fino (R-NY) suggested the drafting of “punks and hoods” since drafting them “would cut down our ever-increasing crime rate and make our streets and parks safe again.” Representative Richard Bolling (D-MO) referenced an article by Gus Tyler (the chairman of the National Conference on the Draft). This article noted some limitations with a professional military. “Ending the draft,” Tyler wrote, “eliminates legal compulsion to enter the military service, but it does not eliminate circumstantial compulsion to do so. Both forms of compulsion are disquieting to a free soul.” Representative Barber Conable, Jr. (R-NY) expressed his disappointment that conscription had not received more annual reviews or assessments by the Congress.

Those opposed echoed the sentiments of earlier opponents. Representative George Brown, Jr. (D-CA) emphasized the need to increase pay as a way to encourage voluntary

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131 Representative Donald Fraser, speaking on Changes in the Draft Laws, 90th Congress, 1st sess., Congressional Record (March 20, 1967): HR: A1441.
enlistment. According to Brown, “The possibility of replacing the present system of compulsory military conscription with an all volunteer [sic] professional army deserves our most serious consideration.” Representative Donald Rumsfeld (R-IL), the architect for the All-Volunteer Force, expressed his concerns with conscription that bore similarities to those concerns expressed by Brown. Rumsfeld, in referencing an article written by Representative Thomas Curtis (R-MO) for *Playboy*, listed five main issues with conscription. Men were reluctant to serve when considering other job prospects, men did not remain in the military long enough to become officers, the current system was economically wasteful, and the National Guard units were excessively large. Representative Thomas Rees (D-CA) expressed his concern with certain provisions in the existing bill. According to Rees, “a greater problem of morality and conscience, is the overriding question of whose names are left out of the hat in the first place.”

Much like earlier concerns from the religious communities, Representative Don Edwards (D-CA) expressed his concerns regarding the provisions upon conscientious objectors. In the view of Representative Edwards, “I call attention particularly to the inequity of the pending legislation in not recognizing moral and religious obligations of Christians to abstain from participating in a particular unjust war.”

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135 Representative George Brown, speaking on Replacement for Draft Laws, 90th Congress, 1st sess., Congressional Record (March 9, 1967): HR: A1182. Representative Brown also referenced a speech by Professor Joseph McMurray (Queens College in New York) on March 14, 1967. According to this speech, conscription was improper because of “the ground of freedom, which is the most important, and the second is on the ground of the draft’s economic meanings,” Representative George Brown, speaking on The Draft and Freedom, 90th Congress, 1st sess., Congressional Record (March 14, 1967): HR: A1294.


Representative Brock Adams (D-WA) offered solutions for reform and the movement toward a volunteer military. Adams advocated for improvement of boards to properly classify men, reduction in cost with a smaller military based on readjusted needs to support America’s allies, and a re-evaluation of American foreign policy. Representative Garner Shriver (R-KS) said, “It is unfortunate that this law, which affects every American family, does not clearly state the purpose of maximizing voluntary enlistments and minimizing draft calls.”

The unpopularity of the Vietnam War increased as the war continued. In May 1967, President Johnson spoke to the state directors of Selective Service. Director Lewis Hershey, the national director, was also in attendance. Johnson addressed the role of the state and national directors of Selective Service. Johnson described them as playing the “most important role in providing all of us with an effective national service, and in effective national defense.” He admitted that Selective Service had its critics, and his intention was to “improve” Selective Service. Johnson said, “Selective Service, as you know, has been an essential part of our Nation’s security system and a part of the system of security for the free world. It has been that for more than a generation.” President Johnson noted, “that principle of fairness must prevail, particularly at a time when only some are called upon – as they are today – to fight to defend our freedom.” Johnson indicated the reports and studies conducted exposed the issues with Selective Service, and his desire to “correct the inequalities in this system.”

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139 Representative Brock Adams, speaking on Draft Reform and a Volunteer Army, 90th Congress, 1st sess., Congressional Record (June 20, 1967): HR: A3125.
142 Lyndon Johnson. 1967. Remarks to the State Directors of the Selective Service System.
143 Lyndon Johnson. 1967. Remarks to the State Directors of the Selective Service System.
144 Lyndon Johnson. 1967. Remarks to the State Directors of the Selective Service System.
These adjustments revolved around alterations at local boards, efforts to ensure registrations understood the laws, a change to the appeal process for a registrant’s classification, a change to the “oldest first” selection process, and “a fair and impartial random system of selection.”\textsuperscript{146} These changes, in Johnson’s view, were imperative since “every principle of fairness, every tenant of our democratic faith, requires us to make our institutions representative of the people with whom they deal.”\textsuperscript{147} Part of this fairness, as Johnson indicated, revolved around registrants’ awareness of the law. To ensure registrants knew their rights and the law, they were ordered to receive a booklet. In an extension of transparency, registrants were to be informed of the appeal process. Men were also given more time to make an appeal. This appeal process expanded from ten days to thirty days. Johnson also addressed student deferments for graduate education, which was eliminated for all except medical and dental students. Johnson, referring to the use of graduate education as a way of “pyramiding,” indicated that “postgraduate deferments have led to exemption from military duty.”\textsuperscript{148} For Johnson, all changes needed to be evaluated based on cost, means of implementation, and their effectiveness to improve Selective Service.\textsuperscript{149} These changes, in President Johnson’s view, were a way of “modernizing” Selective Service.\textsuperscript{150} This issue of fairness remained a mark upon conscription each time it was used to increase the size of the military. Johnson’s efforts to modify Selective Service to increase fairness represented his attempt to eliminate resistance. As tensions escalated and involvement increased in Vietnam, Johnson hoped these alterations would eliminate resistance.

\textsuperscript{146} Lyndon Johnson. 1967. Remarks to the State Directors of the Selective Service System.  
\textsuperscript{147} Lyndon Johnson. 1967. Remarks to the State Directors of the Selective Service System.  
\textsuperscript{148} Lyndon Johnson. 1967. Remarks to the State Directors of the Selective Service System.  
\textsuperscript{149} Lyndon Johnson. 1967. Remarks to the State Directors of the Selective Service System.  
\textsuperscript{150} Lyndon Johnson. 1967. Remarks to the State Directors of the Selective Service System.
The End of the Draft and the All-Volunteer Force

President Richard Nixon echoed earlier sentiments in a statement to the Congress on May 13, 1969. Nixon noted the “disruptive impact” of conscription upon men and their families. Due to this disruption, Nixon said, “I continue to believe that under more stable world conditions and with an armed force that is more attractive to volunteers, that ideal can be realized in practice.” Nixon’s efforts, in his view, would “attract more volunteers to military service, utilize military manpower in a more efficient way, and eliminate conscription as soon as that is feasible.” This movement to the All Volunteer Force, however, was not an immediate alternative to conscription. This was a process to shift American military policy from a system of registration and selection into a system dependent on voluntary enlistment.

One of Nixon’s requests was for the Congress to amend Selective Service to conditions prior to the amendments in 1967, which restricted the president’s ability to alter the call-up procedures for registrants. President Nixon outlined six changes to improve conscription. Much like Johnson, Nixon argued for the selection of the youngest men first. His second change, being related to the first, addressed the period of eligibility for a man. In Nixon’s view, men should have a smaller window of eligibility. The proposed change would place men into different classes based on the length of time they were eligible for service. For example, once they were eligible for twelve months – a man would be placed into a new category with Selective Service to decrease the likelihood he would be called for service. Nixon explained this would reduce the anxiety men felt because men would be equally eligible for service for a period of seven years if

the law remained unchanged. His third proposed change involved the selection process itself. According to Nixon, “a procedure of this sort would distribute the risk of call equally – by lot – among all who are vulnerable during a given year, rather than arbitrarily selecting those whose birthdays happen to fall at certain times of the year or the month.”

The last two changes, in Nixon’s proposal, would revolve around deferments for college students. Unlike the change proposed by President Johnson, Nixon would continue deferments for graduate students (regardless of their course of study) for the current academic year. Allowing men to remain enrolled in college, for Nixon’s plan, allowed minimal disruption to scholarship or funding, the passage of required examinations, and the completion of their degrees. As Nixon explained, “I continue to believe in the wisdom of college deferments. Permitting the diligent student to complete his college education without interruption by the draft is a wise national investment.”

Nixon concluded his statement with a comment on the role of conscription in American society. Nixon said, “ultimately we should end the draft. Except for brief periods during the Civil War and World War I, conscription was foreign to the American experience until the 1940’s.” Nixon is correct to comment on the American public’s response to conscription through American history. Nixon correctly indicated that American society became accustomed to peacetime conscription since 1948. Conscription, in Nixon’s view, should be replaced with a volunteer force. In echoing the sentiments of fairness like Johnson, Nixon said, “let us be sure that the operation of the Selective Service is as equitable and as responsible as we can make

it.”\textsuperscript{157} Nixon explained, “by drafting the youngest first, by limiting the period of vulnerability, by randomizing the selection process, and by reviewing deferment policies, we can do much to achieve these important interim goals.”\textsuperscript{158}

The following year, President Nixon issued Executive Order 11527 to amend certain provisions of Selective Service law. Most of the changes revolved around altering the deferments to make the language clearer on which men received the deferments. The provisions to defer men for certain civilian occupations (college students) and agricultural occupations were adjusted through this order. This executive order suspended the determents for allied medical specialists. Student deferments were altered to include those enrolled in full-time instruction toward the completion of a baccalaureate degree while enrolled in a community college, junior college, technical school, or while working as an apprentice for a trade. These students were required to earn a “satisfactory” score in full-time courses of study to receive this deferment. Men were further evaluated based on their “necessary employment,” which required that men performed worked amid a shortage of workers, their absence from this work was proven to cause a “material loss of effectiveness in such activity,” the man was irreplaceable in his given field, and the work was not seasonal.\textsuperscript{159} Agricultural workers, to receive the deferment, were those men “employed in the production for market of a substantial quantity of those agricultural commodities which are necessary to the maintenance of the national health, safety, or interest.”\textsuperscript{160}

This executive order also addressed dependency requirements and the physical examination. Men were eligible for the child dependency deferment provided they “maintain bona fide family relationship in their home with his child or children, except that this paragraph shall not apply to any registrant who subsequently becomes a physician, dentist, or veterinarian.”\(^{161}\) The physical examination, as per this executive order, was also altered. Men, under the age of twenty-six that had not previously received a physical examination, were examined upon request by the registrant. Local boards could accept these requests in writing, and were required to perform the exam within sixty days of receiving the request. If men passed the physical exam, and were deemed fit for service, they would then wait until they were officially selected for service.

President Gerald Ford and President James Carter issued proclamations and executive orders regarding clemency for those that violated the Selective Service laws. President Ford issued Proclamation 4313 that addressed evaders and deserters.\(^{162}\) According to Ford,

> In furtherance of our national commitment to justice and mercy these young Americans should have the chance to contribute a share to the rebuilding of peace among ourselves and with all nations. They should be allowed the opportunity to earn return to their country, their communities, and their families, upon their agreement to a period of alternate service in the national interest, together with an acknowledgement of their allegiance to the country and its Constitution.\(^{163}\)


\(^{162}\) Evaders were defined as “an individual who allegedly unlawfully failed under the Military Selective Service Act or any rule or regulation promulgated thereunder, to register or register on time, to keep the local board informed of his current address, to report for or submit to preinduction or induction examination, to report for or submit to induction itself, or to report for or submit to, or complete service,” Proclamation 4313 – Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters. Deserters were defined as “a member of the armed forces who has been administratively classified as a deserter by reason of unauthorized absence and whose absence commenced during the period from August 4, 1964 to March 28, 1973,” Gerald Ford. 1974. Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters, Proclamation 4313.

Ford acknowledged the seriousness of evasion and desertion, but indicated that clemency was required for the nation to restore itself following the Vietnam War. Ford said, “reconciliation among our people does not require that these acts be condoned. Yet, reconciliation calls for an act of mercy to bind the Nation’s wounds and to heal the scars of divisiveness.”

Conditions for reconciliation for evaders and deserters consisted of alternate service to “promote the national health, safety, or interest” provided they did not have other existing criminal charges. This term of service, to last twenty-four months, could not consist of a term in the American military. Deserters, however, were subject to further scrutiny before they were allowed admission into the clemency program. As Ford explained,

if a member of the armed forces has additional outstanding charges pending against him under the Uniform Code of Military Justice, his eligibility to participate in this program may be conditioned upon, or postponed until after, final disposition of the additional charges has been reached in accordance with law. Deserters were then also eligible for an undesirable discharge. Ford noted, “upon satisfactory completion of a period of alternative service prescribed by the Military Department or Department of Transportation, such individual will be entitled to receive, in lieu of his undesirable discharge, a clemency discharge.”

Through Executive Order 11803, President Ford created the Presidential Clemency Board. This board, tasked with reviewing cases of clemency for evaders and deserters, provided President Ford with their findings of support or denial of clemency per case. According to this

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166 The typical length of a term of service during the Vietnam War was a period of twenty-four months.
order, “if clemency is recommended, the Board shall also recommend the form that such
clemency should take, including clemency conditioned upon a period of alternative service in the
national interest.” The Board gave priority to the men that had no other outstanding criminal
charges. The Board, created in September of 1974, was required to complete the survey and
make their determinations of clemency by December 31, 1976. This was the final day for the
existence of the Board. Executive Order 11804 authorized the Director of Selective Service to
“proscribe, to establish, implement, and administer the program of alternate service.” The
initial date to submit requests for clemency was January 31, 1975. President Ford, after being
told that many eligible men had been unaware of the clemency program, extended the date for
submission to March 1, 1975. Proclamation 4345 detailed this adjustment to the date of
submission, but Proclamation 4353 ultimately extended the submission deadline to March 31,
1975.

The final proclamation, issued by President Ford, eliminated registration for Selective
Service. Unlike any of his predecessors, President Ford suspended registration for Selective
Service. He, however, alluded to the potential of a periodic registration in the future.
Proclamation 4360, dated March 29, 1975, indicated that “an annual registration system, existing
procedures are being terminated and will be replaced by new procedures which will provide for
periodic registration.” This was Ford’s final action upon Selective Service. The active

170 Gerald Ford. 1974. Delegation of Certain Functions Vested in the President to the Director of Selective Service,
Executive Order 11804.
171 According to President Ford, the need to delay the submission date was “based on a significant increase in the
number of applications and inquiries over the past few weeks when publicity and communications about the
program were greatly expanded.” Gerald Ford, 1975. Statement Announcing Extension of the Program for the
Return of Vietnam Era Evaders and Military Deserters.
conscripting of men ended in 1973, but men were still legally required to register in the absence of an active conscription call. Ford suspended registration several years after America’s last man was drafted for military service.

Before the issuance of this proclamation, the courts addressed issues of registration. Rowland v. Tarr, 378 F. Supp. 766 was heard in the United States District Court for the Eastern District of Pennsylvania. The case began in 1971. A five-count complaint was dismissed in April 1972. In June 1973, the Court of Appeals affirmed all counts except for count III. Andrew Rowland challenged the constitutionality of the Military Service Act since it only required males to register. According to Rowland and his legal counsel, this male-only registration violated the due process of law and the equal protection of law as interpreted by the Fifth Amendment. On June 30, 1973, the Selective Service System lost their ability to draft more men, but registration was still required for men. The Chief Judge of the Circuit Court of Appeals for the Third Circuit called for three judges in the district court to render a decision on this case. In 1974, this court determined that Rowland still needed to register and comply. They argued that deferments were still available, which may allow Rowland to avoid service. Furthermore, unlike other recent cases heard by the courts in the late 1960s, this was a case that challenged the legality and constitutionality of Selective Service. Other cases, for example, questioned the availability or legality of deferments for students. The legality of Selective Service was upheld as constitutional.

With his victory in the election of 1976, President James Carter was inaugurated as the 39th president of the United States. The following day, January 21, 1977, he issued Executive

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173 The Honorable Max Rosenn (Circuit Judge), the Honorable Joseph S. Lord, III (Chief Judge of the Eastern District of Pennsylvania), Judge James H. Gorbey as the three-judge panel.
Order 11967 to address the prosecution of men that violated Selective Service between August 4, 1964 and March 28, 1973. According to this order, “the Attorney General shall cause to be dismissed with prejudice to the government all pending indictments for violations of the Military Service Act.” The Attorney General was asked to dismiss these cases unless they involved “acts of force or violence deemed to be so serious by the Attorney General” or cases that involved “employees or officers of the Selective Service arising out of such employment.” This order contained provisions for those “precluded from reentering the United States…by reason of having committed or apparently committed any violation of the Military Selective Service Act.” In its concluding remarks, this order allowed “conditional clemency or granted a pardon or other clemency” to eligible men as they would “receive the full measure of relief afforded by this program if they are otherwise qualified under the terms of this Executive Order.”

Upon the Soviet invasion of Afghanistan, President Carter restored registration for Selective Service. This effort, part of Carter’s plan regarding the “strengthening [of] the Nation’s capacity for rapid personnel mobilization in an emergency,” would allow the United States to “maintain a strong military establishment not for aggressive purposes, but as a bulwark to be used against aggression and war.” In echoing the previous presidents’ statements regarding preparedness, Carter said, “we must be prepared for conventional conflict- and deterring such

conflict may depend on the timely availability of our forces.”179 Carter called for the registration of both men and women as an effort to “increase our preparedness and is a further demonstration of our resolve as a nation.”180 Despite this language regarding the use of force, Carter stressed that “the United States is committed to peace” since the buildup of military force would allow the United States to “help maintain peace and to prevent conflict in the region of the Persian Gulf and Southwest Asia.”181 Carter did not mobilize the local draft boards to their full operative capacities. Young Americans would not be classified nor given medical exams. Young Americans would self-register, as males had done since World War I, as the resources of the United States Postal Service, Internal Revenue Service, and the Social Security Administration were used for this effort. Carter said, “our military manpower policy continues to rely on voluntary enlistment. I will continue to strengthen the All-Volunteer Force.”182

In a departure from earlier registration calls, women would be required to register for non-combat roles. To explain his decision for female registration, Carter said, “[female registration] is a recognition of the reality that both women and men are working members of our society.”183 According to Carter, 150,000 women were serving in the armed services at this time. As Carter noted, “they are performing well, and they have improved the level of skills in every branch of the military service.”184 Carter addressed the concerns of the American public regarding the potential drafting of women. Carter explained, “there are almost as many job categories in the military service as there are in civilian life, and many of these categories do not

involve combat. In the All-Volunteer Force, women are successfully carrying out tasks which, in the event of hostilities, would involve deploying them in or near combat zones.” Carter expressed his goal to include registration of women as a long-term goal toward female equality. Carter explained, “just as we are asking women to assume additional responsibilities, it is more urgent than ever that the women in America have full and equal rights under the Constitution. Equal obligations deserve equal rights.”

President Carter gave some remarks regarding this new effort of registration on July 2, 1980. As Carter indicated, this effort of registration was “not to threaten war, but is to preserve peace.” To further clarify his intentions, Carter said, “the registration act is not a draft; I am not in favor of a peacetime draft. This registration act will do a great deal to marshal our own Nation’s resistance to succumbing to temptation which might lead to war.” In Carter’s view, conscription was only be used during formal declarations of war or national emergency, but would also require “separate legal action” by the Congress. Carter wanted to remain committed to the use of the All-Volunteer Force for defense and offensive purposes. In echoing the sentiments of President Lincoln and President Wilson of obedience and adherence to the law, Carter said, “I would like to ask the support of all Americans for this move: Americans in the age that will be registered and Americans of all ages who believe in a strong country, who believe in patriotism, who believe in maintaining peace through strength.”

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This act, according to Carter, meant that men and women were required to register themselves since registration would allow for “expediting the process by which, if our Nation enters a time of emergency or a threat to our national security or a time of war in the future, the marshalling of our defense mechanisms can be expedited.” The Congress allocated the funds to cover the cost of registration, but did not implement female registration. The first round of registration called for nineteen through twenty-one year old males, which was to begin on July 21, 1980. On July 18, 1980, the United States District Court for the Eastern District of Pennsylvania issued an opinion that the Military Selective Service Act violated the due process clause of the Fifth Amendment. The United States Government filed a petition of appeal on July 19, 1980. Justice Brennan, Circuit Justice for the Third Circuit, granted a stay of the district court’s order to suspend registration. Male registration, however, resumed on July 21, 1980. Despite his efforts for female equality, Carter’s proposed registration of women has still not taken place even in the current period.

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Understanding the Data

Table 1 demonstrates the support among the members of Congress regarding each of the conscription laws. The debates among members of Congress, either supportive or opposed to conscription, remained similar over time. Congress, as shown in Table 2, did not vote along party lines since this shows broader support for conscription as a military policy.

Table 1: Congressional Voting Pattern

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Table 2: Presidential Congressional Support

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The party of the sitting president maintained a majority in the 37th, 65th, 76th, and 80th sessions of the Congress. This illustrates the times of unified government. While conscription was not a partisan issue, we can examine the overall number of seats held by the president’s party as each conscription bill was voted upon in the Congress.

The usage of conscription during various wars remained largely contested among the American public. Despite these challenges, the Congress continued to implement pieces of legislation to require the registration and mandatory service of young men. This military service, during declared and undeclared wars, was deemed essential by different sessions of Congress then signed into law by the president. Members of Congress had remained vocal in their support of or opposition against conscription. Many of their arguments, either positive or negative, remained consistent throughout American history. These arguments of support inform many of the statements made by the presidents. National defense, national security, and obligations of citizenship remained constant themes to support conscription. Those opposed echoed the sentiments of personal liberty, the benefits of volunteerism, and the flaws within conscription. While there have been some noticeably silent presidents, most have been vocal in their support of conscription. Most presidents have made statements to encourage compliance, emphasized
punishments for disobedience, and have even expressed their concerns with alteration and fairness.
CONCLUSION

Between 1863 and 1973, America’s male population was subject to conscription calls and mandatory military service. Conscription was used to quickly amass a large military force. Congress debated and voted favorably on these conscription bills. Several presidents then issued their remarks regarding the bills. These proclamations and executive orders illustrate the actions and role of the American president. The American president, the commander in chief of the armed forces of the United States, was further tasked with enforcement of these laws. These proclamations and executive orders differed per president, and some presidents remained silent upon the issue of conscription. These leaders made statements regarding compliance, potential punishments, and their efforts to improve conscription. While conscription remained a relatively unpopular policy throughout American history, these presidents sought to elicit compliance and adherence of law. Once the conscription ended in 1973, President Ford and President Carter offered plans for clemency for violators. Overall, these presidents have been vocal regarding the importance of conscription, the need for a large military force, and the responsibilities of the American military force either domestically or internationally.

Conscription is an interesting case study to examine amid the theories of critical juncture, path dependency, power of the president, unilateral action, and the Two Presidencies Thesis. In a departure with the militia system, the implementation of federal conscription signifies a critical juncture. In creating this new system, Congress passed legislation to directly conscript men into
the United States military. The theories of unilateral action should not be broadly used to explain the actions of all presidents at the time of an active draft.

Conscription, used to create a federally maintained and controlled military policy, was used to quickly muster and maintain a large military. While conscription remained an unpopular military policy, the presidents sought to instill order, elicit obedience and adherence to the law, and calm the criticism from its opponents. As the head of the executive branch and the commander in chief of the American military, these presidents have shown their support for conscription by signing conscription bills into law. Even as President Johnson and President Nixon addressed deferments and their efforts to increase fairness, these presidents worked with the existing law.

Some presidents were more active in their relationship with conscription. President Eisenhower called for the end to funding for the Reserves, but Congress pushed back legislatively to restrict the president from funding decisions regarding the Reserves. President Nixon was vocal opponents to conscription as he called for an alternative system, but ultimately asked for the Congress to extend the then current conscription law for an additional two years. President Ford officially ended registration, but also created a system of clemency. President Carter responded to the Soviet invasion into Afghanistan as he called for Congress to restore registration for men and women. In a response to Carter, the Congress only appropriated funds for the registration of men. Historically, presidents waited for the actions of Congress. In more recent times, however, some presidents took a more active role in their relationship with the Congress in regard to conscription. There are, however, few instances in which presidents took
unilateral action in regard to conscription. Presidents have followed the action of Congress to
draft and pass bills regarding conscription. The Two Presidencies Thesis has been used to
explain the deference of Congress to presidents in matters of foreign policy, but conscription
remains an example of Congress leading the action. While there are some noted exceptions
(such as President Richard Nixon, President Gerald Ford, and President James Carter), presidents
have mostly followed Congress rather than take an outward stance regarding conscription.
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