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Congress's Unused War Powers

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By George F. Will

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Americans are wondering, with the lassitude of uninvolved spectators, whether the president will initiate a war with [Iran](#). Some Democratic presidential candidates worry, or purport to, that he might claim an authorization for war in a Senate resolution labeling an [Iranian Revolutionary Guard](#) unit a terrorist organization. Some Democratic representatives oppose the president's request for \$88 million to equip B-2 stealth bombers to carry huge "bunker-buster" bombs, hoping to thereby impede a presidential decision to attack Iran's hardened nuclear facilities.

While legislators try to leash a president by tinkering with a weapon, they are ignoring a sufficient leash -- the Constitution. They are derelict in their sworn duty to uphold it. Regarding the most momentous thing government does, make war, the constitutional system of checks and balances is broken.

Congress can, however, put the Constitution's bridle back on the presidency. Congress can end unfettered executive war-making by *deciding* to. That might not require, but would be facilitated by, enacting the Constitutional War Powers Resolution. Introduced last week by Rep. [Walter B. Jones](#), a [North Carolina](#) Republican, it technically amends but essentially would supplant the existing War Powers Resolution, which has been a nullity ever since it was passed in 1973 over President [Richard Nixon](#)'s veto.

Jones's measure is designed to ensure that deciding to go to war is, as the Founders insisted it be, a "collective judgment." It would prohibit presidents from initiating military actions except to repel or retaliate for sudden attacks on America or American troops abroad, or to protect and evacuate U.S. citizens abroad. It would provide for expedited judicial review to enforce compliance with the resolution and would permit the use of federal funds only for military actions taken in compliance with the resolution.

It reflects conclusions reached by the [War Powers Initiative](#) of the [Constitution Project](#). That nonpartisan organization's 2005 study notes that Congress's appropriation power augments the requirement of advance authorization by Congress before the nation goes to war. It enables Congress to stop the use of force by cutting off its funding. That check is augmented by the Antideficiency Act, which prohibits any expenditure or obligation of funds not appropriated by Congress, and by legislation that criminalizes violations of the act.

All this refutes [Rudy Giuliani](#)'s recent suggestion that the president might have "the inherent authority to support the troops" even if funding were cut off. Besides, American history is replete with examples of Congress restraining executive war-making. (See "Congress at War: The Politics of Conflict Since 1789," a book by Charles A. Stevenson.) Congress has forbidden:

Sending draftees outside this hemisphere (1940-41); introduction of combat troops into [Laos](#) or [Thailand](#) (1969); reintroduction of troops into [Cambodia](#) (1970); combat operations in [Southeast Asia](#) (1973); military operations in [Angola](#) (1976); use of force in [Lebanon](#) other than for self-defense (1983); military activities in [Nicaragua](#) (1980s). In 1993 and 1994, Congress mandated the withdrawal of troops from [Somalia](#) and forbade military actions in [Rwanda](#).

When Congress authorized the president "to use all necessary and appropriate force" against those complicit in the Sept. 11, 2001, attacks, Congress *refused* to adopt administration language authorizing force "to deter and preempt any future" terrorism or aggression. The wonder is that the administration bothered to seek this language.

The administration's "presidentialists" -- including the president -- believe presidents are constitutionally emancipated from all restraints regarding core executive functions, particularly those concerning defense and waging war. Clearly they think the rejected language would have added nothing to the president's inherent powers.

Congress's powers were most dramatically abandoned and ignored regarding Korea. Although President [Harry S. Truman](#) came from a Congress controlled by his party and friends, he never sought congressional authorization to send troops into massive and sustained conflict. Instead, he asserted broad authority to "execute" treaties such as the [U.N.](#) Charter.

For today's Democrats, resistance to unilateral presidential war-making reflects not principled constitutionalism but petulance about the current president. Democrats were supine when President [Bill Clinton](#) launched a sustained air war against [Serbia](#) without congressional authorization. Instead, he cited [NATO's](#) authorization -- as though that were an adequate substitute for the collective judgment that the Constitution mandates. Republicans, supposed defenders of limited government, actually are enablers of an unlimited presidency. Their belief in strict construction of the Constitution evaporates, and they become, in behavior if not in thought, adherents of the woolly idea of a "living Constitution." They endorse, by their passivity, the idea that new threats justify ignoring the Framers' text and logic about shared responsibility for war-making.

Unless and until Congress stops prattling about presidential "usurpation" of power and asserts its own, it will remain derelict regarding its duty of mutual participation in war-making. And it will merit its current marginalization.

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