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Congress must decide if it or the president declares war

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Last week, in a hearing before the Senate Armed Services Committee, Sen. Jeff Sessions, R-Ala., asked Secretary of Defense Leon Panetta, "do you think you can act without Congress to initiate a no-fly zone in Syria?"

Panetta -- a former congressman -- bobbed, weaved, and waffled: "Our goal would be to seek international permission and we would ... come to the Congress and inform you and determine how best to approach this"

That answer would be "breathtaking to the average American," Sessions declared: you're going to seek "international permission" and then maybe you'll tell Congress what you're doing?

Rep. Walter Jones, R-N.C., apparently found it "breathtaking" as well. On Wednesday, he launched a preemptive strike of his own, in the form of a resolution "expressing the sense of Congress that the use of offensive military force by a president without prior and clear authorization of an Act of Congress constitutes an impeachable high crime and misdemeanor under Article II, Section 4 of the Constitution."

Is unauthorized war-making an impeachable offense? Certainly. As Hamilton explains in "The Federalist," the impeachment power serves as "an essential check in the hands of that body upon encroachments of the executive," aimed at "those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust."

Given the many abuses of public trust committed by presidents over two centuries of constitutional history, isn't it surprising we've only had two and a half presidential impeachments?

(For those keeping score at home. that's Andrew Johnson, Bill Clinton and Richard M. Nixon -- who resigned before the articles of impeachment were put before the full House.) Any way you look at it, that's far too few.

In fact, Congress considered impeaching Nixon for waging war without authority. Rep. John Conyers, D-Mich., drafted an article of impeachment based on the secret bombing of Cambodia, charging Nixon with violating his oath of office by ordering "the concealment from the Congress of the facts ... concerning the existence, scope and nature of American bombing operations in Cambodia in derogation of the power of the Congress to declare war." That charge did not make it into the final articles of impeachment, which is too bad. As the House Judiciary Committee's William Hungate, D-Mo., put it at the time: "It's kind of hard to live with yourself when you impeach a guy for tapping telephones and not for making war without authorization."

Alas, Rep. Conyers, who has tried to impeach three Republican presidents for unauthorized war-making, stayed silent in 1999 when Bill Clinton ignored three congressional votes denying him authority to wage war in Kosovo. For Conyers and too many others, illegal wars are OK as long as you like the president who is waging the war.

You can't fairly accuse Jones of similar constitutional hypocrisy. Jones rose to national attention in 2003, when, in a fit of pique over France's refusal to back the Iraq War, he ordered the House cafeteria to rename french fries "Freedom Fries."

But his doubts about the war grew: "I did not vote my conscience and I sent kids to die, and they didn't have to go," he said later. In 2007, Jones tried to set things right by introducing the constitutional War Powers Resolution, which would limit the president to defensive uses of force.

You may look at Jones as a Don Quixote tilting at windmills with a flaccid lance. I see him as somebody armed with a more powerful weapon, the Constitution, and I think he's making an important point: The impeachment power is there for a reason.

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