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Will Congress Take Back the War Power?

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I collaborated with my Cato colleague John Samples on [an op-ed that appears in today's *Philadelphia Inquirer*](#)^[3]. In it, we speculated on the impact, if any, that the newly elected members of Congress might have on the military budget, and on U.S. foreign policy generally. I lived in the Philly area for a number of years, attending grad school at Temple, and living and working in Delaware County, and over the river in New Jersey, so it was pretty cool to be published there, for just the second time.

I would like to clarify one point. John and I write:

The tea party movement has no clear foreign policy agenda. It seems unlikely, however, that the same tea partyers who want the U.S. government to do less at home are anxious to do more everywhere else.

For example, the movement and its new representatives in Washington might prefer to avoid sending U.S. forces into unnecessary and futile wars. Accordingly, they might also realize that substantial reductions in military spending are strategically wise, fiscally prudent, and politically necessary.

I don't want to overstate the extent to which the public drives such things. Several ^[4] studies show that Americans tend to defer to elites, especially on matters of foreign policy. This can have a particularly pernicious effect when we're talking about wars. Indeed, it is the launching of wars, and the supposed need to sustain those wars, and then the post-war occupations long after the wars had ended, that explain why the United States today spends more on its military than at any time since World War II. We add new missions, new obligations, new deployments; we almost never shed them.

The historical pattern is pretty clear. Washington launches a war. Initially, it might not even look like a war. It might be a police action, or combat advisers, or technical assistance, or a humanitarian mission. But then some of those troops are killed or injured, or perhaps other Americans are harmed in the process, and the public rallies to the troops/the flag. Then, once the mission is well along, there is an overwhelming impulse to see that investment through to victory, to recover sunk costs, or to maintain or restore the nation's credibility.

There a number of arguments for why we shouldn't allow sunk costs or concerns about credibility to sustain a military mission that has outlived its usefulness, or that might actually undermine American security (see, for example, Daryl Press's classic ^[5]). The point here is that the enormous knowledge and power imbalance between the elites and the public at large, combined with the realization within Washington that policymakers can do some pretty stupid things abroad and not pay a heavy political price here at home, tips the scales heavily in an interventionist direction.

The Founders, mindful of this pattern from their study of history, intended for Congress -- and especially the branch closest to the people, the House -- to weigh heavily against foreign wars. Wars would have to be declared, by Congress, and paid for essentially on an as needed basis (recall that the Constitution stipulates the *raising* of an army, and the maintaining of a navy). But despite the fact that members swear an oath to uphold that sacred document, many are perfectly content to evade responsibility, assign blame to the White House when the wars go poorly, and ride in the victory parades when they go well.

This is not a new problem. In 1846, President James K. Polk sent U.S. troops into territory claimed jointly by Mexico and the United States. When Mexican forces attacked a contingent under Gen. Zachary Taylor's command, Congress declared war, handing Polk the conflict that he wanted all along. Two years later, Congress formally censured Polk for exceeding his constitutional authority, but by then the damage had already been done. My Cato colleague Stanley Kober introduced me many years ago to a letter on the incident from then-Cong. Abraham Lincoln to his law partner. The exchange is eerily reminiscent of debates that we continue to have to this day, and I used it in my book, *The Power Problem* ^[6].

Lincoln noted:

Allow the President to invade a neighboring nation whenever he shall deem it necessary to repel an invasion, and you allow him to do so whenever he may choose to say he deems it necessary for such purpose, and you allow him to make war at pleasure. . . The provision of the Constitution giving the war making power to Congress was dictated, as I understand it, by the following reasons: kings had

always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This our convention understood to be the most oppressive of all kingly oppressions, and they resolved to so frame the Constitution that no one man should hold the power of bringing this oppression upon us.

In other words, the Founders' concerns have proved valid, but their system for constraining executive power has failed to live up to their expectations [7]. Although the Constitution grants Congress the authority to declare war, and the president the authority to direct it once declared, our responses to recurring crises -- both real and imagined -- have fundamentally altered the balance of power.

But hope springs eternal. Real change is possible if a few of the new members, and a handful of the old bulls, decide to reject business-as-usual, and perhaps to return to an earlier vision of the proper balance between Congress and the Executive [8], and between the government and the people.

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