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Congress should say ‘no’ to war against Islamic State

By Doug Bandow
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President Barack Obama wants Congress to authorize military action against the Islamic State.

Congress should respond as it was prepared to do when the president requested permission last year to bomb Syria. Capitol Hill should say no.

Candidate Barack Obama stated: “The president does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation.” But that was then and this is now.

Three years ago President Barack Obama took America into war against Libya. Three months ago he initiated hostilities in Iraq against the Islamic State. All without a congressional vote.

Most recently administration officials claimed authority under the Authorization for Use of Military Force against al-Qaida adopted in the aftermath of September 11. But the Islamic State is not al-Qaida and ISIL’s leaders did not help organize the attacks on the twin towers and the Pentagon.

The president obviously changed his mind after his party was defeated in the off-year elections. At least he now is following the Constitution.

The Founders gave most military powers to Congress: raising and funding the military, writing the rules of war, issuing letters of marquee and ratifying treaties. Moreover, Article 1, Section 8 (11) stated: “Congress shall have the power...to declare war.”

The early Americans feared a president and war like today. The Founders particularly opposed a system which subjected the nation’s peace to the whims of one man, accountable to no one.

At the Constitutional Convention George Mason advocated “clogging rather than facilitating war” because he didn’t believe the president to be “safely to be entrusted with” the authority to commence military action.

James Wilson applauded the convention's language: "It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is in the legislature at large."

Today's "president-as-king" club contends that "declare" simply meant to take note of the fact that the chief executive had dragged America into war. But the convention delegates complained about the monarch taking them into unnecessary wars.

John Jay argued that kings relied on dubious motives and engaged "in wars not sanctified by justice or the voice and interests of his people." Pierce Butler spoke against placing in the president's "hands the influence of a monarch, having an opportunity of involving his country in a war whenever he wished to promote her destruction."

Even Alexander Hamilton, who rather liked the idea of re-establishing royalty in America, said the president's authority was "in substance much inferior to [that of the king]. It would amount to nothing more than the supreme command and direction of the land and naval forces ... while that of the British king extends to the declaring of war."

That is the understanding of Supreme Court Justice Antonin Scalia, a conservative icon. He wrote: "Except for the actual command of military forces, all authorization for their maintenance and all explicit authorization for their use is placed in the control of Congress under Article I, rather than the president under Article II."

Unsurprisingly, though unfortunately, many presidents, including the current occupant of the White House, have misused the flexibility necessarily incorporated in a provision governing presidential action in a dangerous world. But the Korean War was the turning point, when presidents began claiming that they could start big wars on their own.

Over the centuries several of America's most respected presidents affirmed the original constitutional understanding. George Washington observed: "no offensive expedition of importance can be undertaken until after [Congress] shall have deliberated upon the subject, and authorized such a measure."

Abraham Lincoln opined that the Framers recognized war "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."

Dwight Eisenhower promised that he would not "order any troops into anything that can be interpreted as war, until Congress directs it."

Now that President Obama finally has requested congressional authorization, legislators should act. By voting no.

Congress has no obligation to support a bad presidential request. The Islamic State is evil, but that hardly makes it unique. American foreign policy should focus on protecting Americans, and not undertaking a Quixotic crusade around the globe.

President Obama did the right thing by belatedly asking Congress for authority to go to war. Congress also should do the right thing — by saying no.

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