

# Congress Shirks its Responsibility, Allows White House to Make Wars

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Theme: [US NATO War Agenda](#)

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On occasion, critics of the Iraq and Afghanistan wars have questioned, with good reason, whether the American war in Afghanistan has been carried far beyond what Congress authorized. This raises a fundamental question that has bedeviled the country since 1950.

Although the Constitution requires Congress to make the decision to go to war and to decide the kind of war to be fought (naval, land, air), since the Korean conflict it has largely abdicated that responsibility to the president, says a law school dean and authority on the issue. The result has been more frequent (and frequently misguided) wars, than there would have been had Congress done its duty.

“Since 1950, the constitutional plan (of America’s founders) has been destroyed, and the power to start wars without a previous Congressional declaration or authorization has been claimed by every President except Eisenhower,” says Lawrence Velvel, dean of the Massachusetts School of Law at Andover.

The framers of the Constitution put the decision-making power on war in Congress because “they felt that war was a disaster and the Executive was too prone to war,” Velvel said. Today, with regard to war “we have inverted the constitutional plan, and war is decided upon not by Congress, but by the President.”

Velvel, who has written extensively on the issue, said the only power the Founders left to the President was his authority to repel an immediate attack on American lives, property or territory—a power he cannot lawfully inflate into a continuing war. The Founders “deliberately rejected the British system in which the king made the decision to go to war, with his powers being facilitated because he had a standing army, could provide navies, and could raise monies for the armed services,” Velvel pointed out.

He said the Founders “wanted a decision so momentous for the people to be made not by one man or a small group of men in the Executive, but by the people’s representatives in Congress,” which is why the Founders wrote the declaration of war clause.

He went on to say the Founders made the President Commander-in-Chief not to impose military control over the civilian authority, “but for the very opposite reason: so that a civilian authority would be in control of the armed forces.”

Velvel said Founder Alexander Hamilton “made clear in *The Federalist* that as Commander-In-Chief the President was only the top general, as it were. He could not, in his military capacity, displace civilian authority” nor start a war but “could only command the armed

forces once a war starts.”

Velvel said that leaving the war decision to the President “is more dangerous than ever in modern times...because a war can escalate into a thermonuclear or biological holocaust” and because “Executive war is facilitated by military and financial facts the framers never dreamed of.” These include a large, powerful standing army, navy, and air force with which to begin a war, millions of reservists the President can call up, and billions of dollars in the military pipeline as well as “contingency funds, reprogrammed funds, and secret funds.”

In the last half century, Velvel notes, Congress has come to be a body of people “whose major goal is to stay in office permanently...Their major interest, therefore, is in raising money for elections” and because of this they want to avoid taking responsibility for hard decisions and are “perfectly happy to let the president make the decision and take the responsibility for war.”

“The concept of doing one’s duty is not a popular idea in America anymore, except in a few segments of society, and people in Congress flee from it at every possible opportunity lest they lose votes,” Velvel said.

He added that even though the appropriations power was given to Congress to give it another check on executive war making, “the power has proven to be a miserable failure in that regard. Congressmen have been unwilling to deny appropriations for guns, tanks, food, etc. to men locked in battle. They feel it would be immoral and unpatriotic, as well as politically disastrous to them personally, to deny monies to men in combat.”

“So, with regard to war, we have inverted the constitutional plan, and war is decided upon not by Congress, but by the President.”

To prevent future Presidential wars, Velvel said, Congress would have to enact a law or set of laws, with teeth, that makes it enforceably illegal to fight a Presidential law. Velvel suggested the following language for such legislation: “Except for repelling an attack on American citizens, forces or property, the Executive shall not engage in military hostilities in the absence of a general or limited Congressional declaration of war or of a specific Congressional authorization which in terms authorizes and is intended to authorize specified forms of combat in specific geographic areas of the world.”

The law would protect soldiers who refused to participate in a war not approved by Congress.: “No member of the armed forces shall suffer any punishment for refusing to participate in such illegal action. The courts mandatorily shall enforce this law.”

Velvel gave his views in a Q. and A. published in “The Long Term View,” the magazine of the Massachusetts School of Law at Andover, which he cofounded and which he serves as Dean. The law school was established in 1988 to provide a quality, affordable education to students from minority, immigrant, and low-income households who would otherwise not be able to afford a legal education.

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