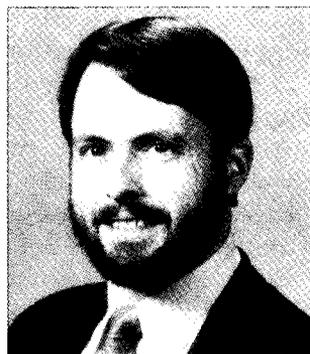


**IDEAS  
ON LIBERTY**

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## Only Congress Can Declare War



**T**he Bush administration has been looking at other potential military targets almost since the war in Afghanistan started. But should the President decide he wants to expand the war, he should get legislative approval.

After September 11 Congress authorized President Bush to retaliate against any “nations, organization, or persons” he determined to be involved in the atrocity. But there is no evidence linking even that ugliest of regimes, Iraq, to the September attacks.

So the administration has spent months developing an alternative justification for attacking: the refusal to accept United Nations inspections aimed at deterring development of weapons of mass destruction. Nonproliferation is a worthy concern, but not one obviously warranting war. Indeed, Baghdad has been out of compliance with the U.N.’s inspection regime since 1998.

Moreover, the President has no authority to act for this reason. Congress authorized him to retaliate against terrorism, not to commence war to enforce U.N. inspections—or overthrow a nasty dictator.

After the Senate Foreign Relations Committee held hearings on the prospect of war with Iraq last August, President Bush promised “to consult with Congress.” But consultation is not nearly enough.

Article 1, Sec. 8 (11) states, “Congress shall have the power . . . to declare war.” The president is commander-in-chief, but he

must fulfill his responsibilities within the framework established by the Constitution and subject to the control of Congress.

Today, of course, presidents prefer to make the decision for war themselves. In effect, American presidents claim to possess power comparable to, if not greater than, that of the onetime head of the Soviet communist party. As then-Defense Secretary Caspar Weinberger rightly criticized the Evil Empire: “Now who among the Soviets voted that they should invade Afghanistan? Maybe one, maybe five men in the Kremlin. Who has the ability to change that and bring them home? Maybe one, maybe five men in the Kremlin. Nobody else. And that is, I think, the height of immorality.”

Now who among Americans has voted to attack, say, Iraq? Should one man in the White House make that decision, it would also be the height of immorality.

One of the founders’ criticisms of the British king was that he could unilaterally drag his nation into war. President Abraham Lincoln, a “strong” president apt to act on his own authority, nevertheless reflected: “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.”

The Constitution’s framers consciously rejected such a system. Still, some Americans opposed the proposed Constitution because they feared that it gave the president too much authority. Don’t worry, explained that great friend of executive power Alexander Hamilton. The president’s power “would

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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.”

The founders wrote the Constitution as they did because they feared that presidents would act as they do now. Explained James Madison in 1793, it is necessary to adhere to the “fundamental doctrine of the Constitution that the power to declare war is fully and exclusively vested in the legislature.”

Constitutional convention delegates did change Congress’s power from “make” to “declare” war, but the intent was to give the president authority to respond to a sudden attack, not initiate a conflict. The Founders wanted to make war less likely.

The president “is not safely to be entrusted with” the power to decide on war, said Virginia’s George Mason. James Wilson advocated a strong presidency, but was pleased that the proposed constitution “will not hurry us into war.” Instead, “It is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress.”

The founders were prescient. Presidents have routinely deceived the public, lied to Congress, and manipulated the political system when taking America into war.

## Monarchical Powers

What argument can be made by those who would give today’s presidents monarchical powers? There will always be potential gray areas. A world in which nuclear missiles can deliver destruction almost instantaneously, and transnational organizations can turn hijacked airliners into cruise missiles, is not a simple one.

But most cases, such as attacking Iraq, are clear. The President must go to Congress.

Naturally, chief executives offer creative reasons to short-circuit the Constitution’s clear requirement. One claim is that the president has some unspecified, ill-defined “foreign affairs power” that reduces the explicit war powers clause to a nullity. However, the framers consciously circumscribed the president’s foreign policy authority by vesting

countervailing power in Congress, including the responsibility to declare war.

Are there any legitimate exceptions to the congressional war power? Some analysts would have Americans believe that in the modern world it is simply impractical to involve legislators in foreign policymaking.

Yet no one thinks that 535 legislators should manage the ensuing war—that’s why the Constitution names the president commander-in-chief. But Congress must decide whether or not the president will have a war to run.

Some would expand the president’s power to use the military for “defensive” purposes. Defensive means defensive, however. Constitutional convention delegate Roger Sherman of Connecticut explained that “the executive should be able to repel and not to commence war.”

In an uncertain world, presidents also like to argue that they must be able to respond instantaneously to unpredictable events. Yet there is almost always time to go to Congress before going to war. Even in the case of the September 11 attack, Congress had ample time to act. There obviously has been no hurry to make war on Iraq.

Today the favorite presidential excuse for claiming the right to unilaterally initiate war is simple: everyone else does it. Those lawyers favored by former President George H. W. Bush point to 200-plus military deployments without congressional approval.

The precedent is thin. Legal scholar Edward Corwin notes that these examples are largely “fights with pirates, landings of small naval contingents on barbarous or semi-barbarous coasts, the dispatch of small bodies of troops to chase bandits or cattle rustlers across the Mexican border, and the like.”

Anyway, future presidents are not absolved from having to follow the Constitution because past presidents violated it. President Dwight Eisenhower respected the Constitution enough to announce: “When it comes to the matter of war, there is only one place that I would go, and that is to the Congress of the United States.” So should President Bush, if he wants to attack a member of the Axis of Evil or another country. □

# Airline Protectionism Hurts Travelers

by Paul A. Cleveland and Jared R. Price

In one form or another the U.S. government has regulated the domestic airline industry since 1930. The imposition of various rules and regulations has kept the industry from becoming as efficient as it might have become had it evolved in a free market. While many controls ended in 1978 and the Civil Aeronautics Board (CAB) was abolished in 1985, the bureaucracy associated with the Federal Aviation Administration (FAA) continues, and the government still thwarts the competitive process.

For example, foreign airlines are barred from flying passengers between domestic locations—so-called “cabotage.” By requiring airlines carrying domestic passengers to be American-owned, the government limits competition in a way that resembles how the CAB limited it. During the CAB years, domestic carriers were allowed to serve only routes for which they held licenses. The certification procedure limited competition between carriers. In 1978 that control was abandoned. However, the protectionist policy continues to limit competition in domestic markets.

Airline deregulation was wildly successful.<sup>1</sup> In the aftermath of decontrol, airfares

dropped while the number of passengers increased. Competition forced the airlines to significantly change their business strategies. Among the most prominent changes was the hub-and-spoke networking system now used by almost all major airlines. Only Southwest Airlines uses substantial point-to-point market segments in its system. Yet even Southwest employs hub locations. As expected, those unable to make the changes needed to succeed have been forced out of the industry. The system has thus been greatly improved, and travelers today have far better options than they have ever had before.

Despite the success of decontrol, a number of problems remain. Anyone who flies knows that a scheduled arrival time is only a tentative guess made by airlines. It is calculated that more than half the flights in the United States are late. In addition, passengers have leveled many other complaints against the airlines about a host of inefficiencies. Why do such inefficiencies remain? Some suggest that the problem is that there are fewer airlines operating now. However, that is the necessary result of a competitive process.

The real answer to why problems persist is that the industry is not entirely free. For example, airports are funded by tax dollars and operated as local government monopolies. In addition, the FAA maintains a monopoly on the air traffic control system, which continues to lag far behind the technology curve. This has resulted in gross inefficiencies.

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