

Who Has the power to declare war?

During the latter stages of the Vietnam War in 1973, the United States House of Representatives and the Senate jointly passed a new resolution. The purpose of this War Powers Resolution was simple: to prevent the president from sending the US military into action abroad without authorization from Congress. The act states:

It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations

The war in Vietnam had started in the early 1960s, and became more and more unpopular as it dragged into the 1970s. Many lawmakers wanted to prevent a similarly long, undeclared war from happening again. The resolution they passed prohibits the armed forces from remaining in action for more than 60 days without authorization or a formal declaration of war. In addition, it mandates that the president must notify Congress within 48 hours of committing US armed forces to action.

The US Constitution establishes the "separation of powers" between the different branches of government by creating a system of "checks and balances" ensuring that no one branch has absolute power over the other two. In current practice, Congress has the power to make laws, the president has the power to approve or veto those laws (which Congress can, in turn, override, if a two-thirds majority agrees), and the Supreme Court has the power to review the constitutionality of laws.

Congress passed the War Powers Act in 1973 to reassert a power that it believed Congress had been given by the Constitution but had been encroached upon by the executive branch. According to Article I, Section 8 of the Constitution, Congress has the powers to declare war, raise and support the armed forces, and control war funding. In practice, however, the president had committed troops to action in Vietnam without authorization from Congress. Even after the United States had sent tens of thousands troops to the country, the war was still classified as a "military conflict" rather than a war.

Passage of the War Powers Resolution itself was an example of the separation of powers in action. After the House of Representatives and the Senate each passed the resolution, it was sent to President Nixon's desk. Nixon, however, exercised his power to veto the bill. The bill was then sent back to Congress where, with a two-thirds vote by each house, lawmakers overrode Nixon's veto. The act was passed into law on November 7, 1973.

But since the act's passage, war powers have remained a subject of debate. The War Powers Act was a point of controversy in 1999, when President Bill Clinton continued the US bombing campaign in Kosovo for two weeks past the 60-day deadline spelled out by the act. The Clinton administration's justification for the decision hinged on its different interpretation of the act. As the *New York Times* states:

[T]he Clinton legal team opined that its actions were consistent with the War Powers Act because Congress had approved a bill funding the operation, which they argued constituted implicit authorization. That theory was controversial because the War Powers Act specifically says that such funding does not constitute authorization.

Critics of the War Powers Act believe that it takes too much power away from the president. They note that the Constitution gives some military authority to the executive branch as well as to the legislative branch. While the Constitution makes clear that Congress has the power to "declare war,"

"make Rules for the Government and Regulation of the land and naval Forces," and allot funding for the military, it also guarantees that "The President shall be Commander in Chief of the Army and Navy of the United States." In 1983, when President Reagan deployed US forces to Lebanon, the administration defended its action by charging that the War Powers Act "infringes on the President's flexibility as Commander in Chief."

In a 1984 article prompted by the Lebanon deployment, Professor Stephen L. Carter of Yale Law School argued that understanding who is correct in this debate requires a careful analysis of the wording of the Constitution. Carter states that the War Powers Act is constitutional simply because it offers only a definition of Congress's war powers:

The War Powers Resolution is nothing more or less than a congressional definition of the word "war" in article I. A definition of this kind coupled with a reasonable enforcement mechanism is well within the power of Congress under a proper understanding of the constitutional system of checks and balances. The definition does not intrude on any presidential prerogative.

1. For what reason was the War Powers Resolution passed? What does the resolution do?
2. What war powers does the Constitution give to Congress? What powers does it give to the president?
3. Describe the system of checks and balances. Can you think of another example of checks and balances between the branches of our government?
4. Do you think that the concept of checks and balances is one that should be applied to waging war, or do you think that government action should be more streamlined when it comes to military action?
5. How do you think having stronger checks and balances would affect the use of the US military? Do you think it would make the US less likely to go to war?