

The Iraq War at 20 Years—Ending the Legal Authorization for War in Iraq

On March 20, 2003, the United States and an allied coalition launched a bombing campaign against Iraq and began the Iraq War to overthrow Saddam Hussein. A protracted campaign led to U.S. occupation and nation-building long after the fall and capture of Hussein. Twenty years later, the congressional authorization for that attack is still active and has been used by four presidents to engage in warfare without further congressional approval. On March 16, 2023, **Sen. Tim Kaine** (D-VA) visited Cato to discuss the efforts being taken in the Senate to finally repeal that authorization.

On March 29, 2023, the Senate voted 66 to 30 to repeal the 1991 and 2002 authorizations for use of military force.

It's great to be back at Cato, and it is sort of emblematic of how difficult this issue is that I was here eight years ago talking about the same issue: wanting Congress to take its Article I responsibilities over war, peace, and diplomacy more seriously. We are on the verge of doing something that the Senate has not done since 1971: have a vote to repeal a war authorization. The last time the Senate did it was 1971, to repeal the Gulf of Tonkin resolution, and it wasn't a full-fledged debate. The vote was on an amendment to the foreign military sales act that repealed the resolution.

At this 20th anniversary of the Iraq War authorization, the Senate is poised to repeal both the 1991 Gulf War and the 2002 Iraq War authorizations. Let me thank Cato for your support. Cato has offered intellectual support on this effort along the way. Sen. Todd Young (R-IN), my colleague and cosponsor, wished he could be here, but he had to be back in Indiana.

Let me tell you how I got focused on this and why I think it's so important that we undertake this effort, and what the undertak-

ing might mean down the road with respect to more broad questions about war powers. In October of 2002, I was the lieutenant governor of Virginia. I had no idea that I would ever run for, much less be elected to the United States Senate. I had no idea that my then 12-year-old oldest child would end up becoming a Marine infantry officer. But I was listening to the debate about whether we should go to war with Iraq and whether Congress should pass the authorization that month.

I assumed that everyone had a lot more knowledge than I did, so I didn't have a clear sense of what should happen. But something troubled me greatly, and only one senator was bringing it up: Robert Byrd. It troubled me greatly that the debate about the Iraq War was happening right before the midterm election. No one could explain why October mattered at all. The invasion didn't happen until March 19 of the following year. So, what was it about October that meant that this war authorization vote had to take place? It seemed to me that the politics of the midterm election was a dominant, possibly

the dominant, feature in that debate and vote. That worried me greatly.

I became sort of obsessed with the thought that we've got to take questions of war more seriously. I started reading more about it. And when Jim Webb, the Virginia senator, decided not to run for reelection, I got into the 2012 race, won the seat, and asked to be on the Armed Services and Foreign Relations committees so that I could hopefully convince some of my colleagues that Congress needed to take our own powers—war, peace, and diplomacy—more seriously rather than abdicate them to executives.

There is a great history of executives overreaching in this space. There's a wonderful scene in the first act of *Henry V* with a sort of sarcastic discussion about how executives may sometimes go to war to distract people's attention from issues that they don't want the public to pay attention to.

That's sort of what executives do. I blame Congresses of both parties under presidents of both parties for abdicating this responsibility. And it's not only a responsibility with respect to war and peace and diplomacy. President Obama—and I was a strong Obama supporter—was negotiating the JCPOA (Joint Comprehensive Plan of Action) with Iran, which I also supported, but he thought he could do it without Congress. And I wrote a bill with the then senator Bob Corker to force President Obama to bring the deal to Congress because he was using congressional sanctions as the negotiating chip. I said, "If you're going to use our sanctions as your negotiating chip, then you can't do a deal without bringing it back to us."

So, why is it so important, 20 years later,

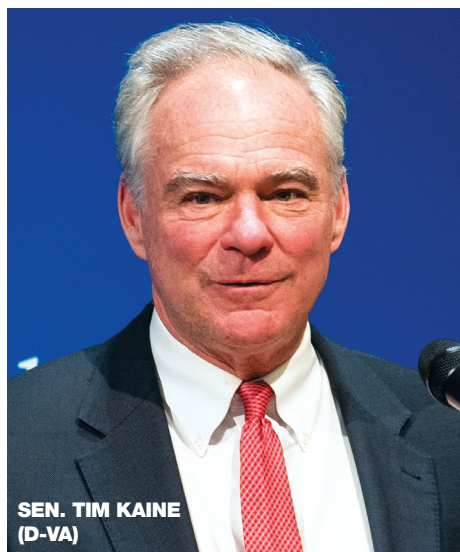
to repeal these two authorizations? I think there are four reasons. First, we have to acknowledge the reality that Iraq is not an enemy. They're a strategic partner. We have two war authorizations against a nation that just last week Secretary of Defense [Lloyd] Austin visited. He held a press conference with Prime Minister Al-Sudani to talk about the need for U.S. and Iraq cooperation to continue to defeat ISIS and other terrorist organizations that jeopardize Iraq and other nearby nations. This trip was also to provide a check against Iranian aggression in the region.

We have about 2,500 troops in Iraq at Iraq's invitation, and Prime Minister Al-Sudani wants us to work together. Iraq has become a force, not of chaos, but a force of regional stability, and they're getting better and better at that. And so we shouldn't have a war authorization against a nation that's now a strategic partner. Iran uses the authorizations to tell Iraq, "They're not really your friends. They're pretending to be your friends. But if they were your friends, they wouldn't have war authorizations against you." The Iraqi prime minister, the Iraqi foreign minister, the Iraqi ambassador to the United States have all said that the repeal of these outdated authorizations would be a positive message about a U.S. and Iraqi partnership. So that's the first reason. Let's just recognize the reality that Iraq is no longer an enemy but is now a partner.

Second, we expect so much of our troops. My oldest son was a Marine infantry commander for eight years who had a couple of deployments. We ask them to do hard things, to risk their lives, bear the burdens of war, and they do that. If we're going to ask the troops to bear the burden, then we ought to bear our responsibility to not allow wars without votes of Congress, to not hide because war votes are tough, to exercise oversight during wars, to ask tough questions, and to declare when wars are over. That is a congressional responsibility. If we're going to ask our troops to shoulder the

more difficult burden, then we shouldn't shirk the easier burden of having a politically difficult debate.

Third, we should repeal the authorizations because an authorization that sits on the books, after its purpose is complete, is an



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opportunity for mischief. We want presidents to come to Congress and ask permission to declare war as the Framers intended in Article I of the Constitution. If there are authorizations on the books that were passed for another purpose but are not repealed, you will find presidents get pretty darn creative. Instead of coming to Congress, they'll say, "Well, look. Congress already gave me authority. Why don't I use it?"

Four presidents—Bush, Obama, Trump, and Biden—have used the 9/11 authorization, which is short, open-ended, with no

clear definition of the enemy, no clear definition of geography, and no time limitation. Four presidents have used that authorization to target terrorist groups, but often terrorist groups that didn't even exist at the time of 9/11, terrorist groups that may have hostile intent toward nations we like but have no hostile intent toward the United States. While the 9/11 authorization has a continued utility, it needs to be revised. Everyone would acknowledge that the 9/11 authorization has been used in places and against organizations that Congress never would have intended in 2001. A zombie authorization on the books that has outlived its life can be an occasion for abuse.

President Trump used the 2002 authorization to warrant striking Qasem Soleimani, the head of the Islamic Revolutionary Guard Corps, while he was in Iraq. Now, nobody was mad that Soleimani, who did so much damage to the United States and others over the years, was found and targeted and removed. But to say that an authorization approving war against Iraq was a legal justification for striking and killing an Iranian military leader because he happened to be in Iraq is completely specious. And yet that's what can happen when authorizations sit on the books past the point at which they were necessary. So that's the third reason: to avoid presidents feeling like they can assert the old authorization as a justification legally without coming to Congress for a real, legal authority for military action with a debate that the American public can see so they understand what's at stake.

Finally, the last reason to do this, I think, is a powerful one. The United States is amazing in so many ways. We're not perfect obviously, but we are an amazing nation in so many ways. Here's something I love about our country: we can turn an enemy into a friend. That's not that easy. There's a phrase in the book of Isaiah, "beat their swords into plowshares, and their spears into pruning hooks." The United States has proven its

ability, as have other nations in communication and in relationship with the United States, to turn an enemy into a friend.

We waged two wars against Germany in the 20th century. They are a close ally now, and they are helping us defend Ukraine against an illegal invasion by Russia. We were at war with Japan. They're a very close ally right now. And Vietnam. We are not allies, as with Germany and Japan, but that relationship has gotten closer and closer. Vietnam now requests port visits by the USS *John McCain* to show that the United States and Vietnam are partners, which has a way of helping them as they check off against the Chinese Communist Party's aggression.

We have adversaries today in the world, and they're watching what we do. And it's not bad for them to see us repeal an authorization and say, "Iraq, you were an enemy, but now Iraq and the United States are strategic partners. There is no permanent

enemy of the United States." It's a magnanimity to take a hostile relationship and look for a way to make it a good relationship.

The House has voted on this already a

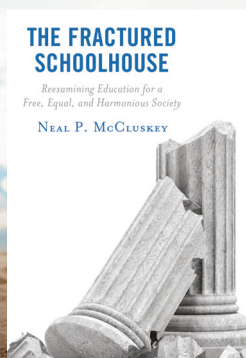
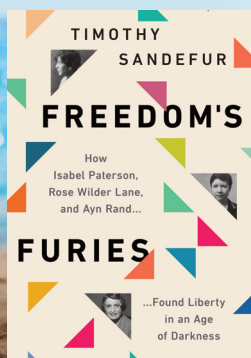
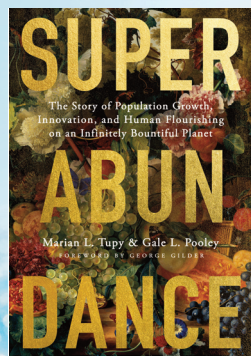
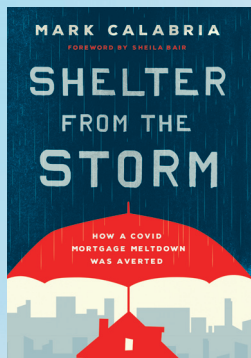
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couple of times. Every Democrat and up to 40 Republicans have voted to repeal the authorizations—usually as an amendment vote to the House defense bill on the floor of

the House. We would like to get the House to take this up as a standalone bill. We've gotten good House bipartisan support. Barbara Lee and Abigail Spanberger are the two Democratic leads, and Chip Roy and Tom Cole are the Republican leads. Roy and Cole are both very close to Speaker [Kevin] McCarthy. This is a bill that is ultimately about reclaiming Article I powers that have been abdicated to the Article II branch. This would be a good thing for a House Speaker to champion.

President Biden put out a statement saying, "I will support this bill. If it comes to my desk, I'll sign it."

Once we get this bill passed by the House and signed by the president, God willing, Todd and I will take one day off. Then we're going to start working on revising and clarifying the 2001 authorization passed after 9/11, and I bet Cato and Cato's friends will have ideas on that too. We look forward to working together. Thank you. ■



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