

Cato's Letter

A QUARTERLY
MESSAGE
ON LIBERTY

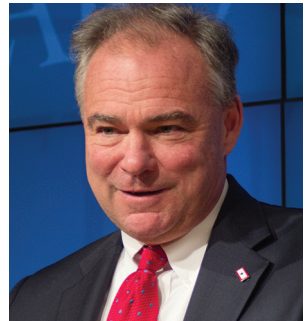
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One Year (and Counting) of Unauthorized War

SEN. TIM KAINE

This is the first time I've had a chance to talk at Cato, and I've been looking forward to it. I think of Cato kind of like I think of the Congressional Budget Office—I sometimes use their wisdom to make my case, and I sometimes argue against them vociferously. Having a slant on policy issues that does not align with either party is a rare thing and a good thing.

We are today starting the traditional August recess in Congress. We like to take vacations, like other Americans do—but Congress is actually, by law, required to take an August recess in odd-numbered years. This was a part of a bill called the Legislative Reorganization Act of 1970.



SEN. TIM KAINE (D-VA) IS A MEMBER OF THE SENATE COMMITTEES ON FOREIGN RELATIONS AND ARMED SERVICES. HE SPOKE AT A CATO INSTITUTE POLICY FORUM IN AUGUST.

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But there is an exception in the statute. The exception says that the mandated recess “Shall not be applicable if on July 31 of such year a state of war exists pursuant to a declaration of war by Congress.”

That provision makes perfect sense. Congress shouldn’t go out for a mandatory 30-day vacation when the nation is at war. It’s not right that American troops should be putting their lives at risk thousands of miles from home while Congress takes a mandated month off.

Today we’re starting on our one-month adjournment—with a nation at war. This Saturday, the 8th of Au-

northern Syria. But the threat that’s posed by ISIL (or the Islamic State) continues to spread in the region and beyond. The war has cost \$3.2 billion, about \$9.5 million per day, and seven American service members have lost their lives.

Recently, we’ve heard that the administration plans to expand their mission. The president has now authorized the military to defend our trained Syrian fighters in the event of attacks from the Assad regime—which are likely to happen—and then we will be in conflict with the Syrian military. We’ve had testimony in hearings by military leaders who said that the threat of ISIL could easily go on for 10 years.

But while the war is expanding, and we have troops risking their lives far from home, and as we prepare to go on a one-month vacation, there is a tacit agreement of both parties, both chambers, and both branches—executive and legislative—to avoid serious discussion and authorization of this war.

I’m a supporter of the president, and I think the U.S. military should be taking action against ISIL. This is not about not supporting the need for military action—it is about how military action is supposed to commence. The president waited for six months to send the authorization to Congress, and the White House has not pushed us to do anything with it. Though vested with the sole power to declare war, pursuant to Article I of the Constitution, Congress has refused to

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gust, marks one year since President Obama began a bombing campaign against the Islamic State in Northern Iraq. In the past year, a growing number of members of the U.S. military—now about 3,500—have served in Operation Inherent Resolve.

We have made major gains in northern Iraq and, more recently,

meaningfully debate, or vote, on war against the Islamic State.

And this is a Congress that is quick to criticize this president for executive action: “Oh, you’ve overreached by doing executive things on immigration, you’ve overreached by doing executive things in terms of fixes to the Affordable Care Act.” But we’re not going to sue the “Imperial President” over this, we’re not going to criticize the “Imperial President” over this, we’re going to give a green light to the “Imperial President” over this—do it and do not come to us and do not ask us because we don’t want to say anything about it.

As far as our allies know, as far as ISIL knows, and, sadly, as far as our troops know, Congress is indifferent to this. I first introduced a resolution to force Congress to authorize this military action under specific limitations the day after the president, on September 10, 2014, faced the nation and said we need to take military action against ISIL. It went precisely nowhere. Instead, Congress recessed before the midterm elections, earlier than they had done since 1960, while a war was underway.

Eventually, the resolution I put in did get a vote in December. The Republicans all voted against it. They said “Look, we’re about to take over the majority in the Senate. We’re not going to vote for it now, but we’re going to get right to it as soon as January third comes around.”

Well, January third came around, and then the argument was “Well, the

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president hasn’t sent us an authorization.” And then the president sent an authorization in mid-February, and then the argument was “Well, we’ve got to worry about Iran now.” And it’s now been six months since the president has sent the authorization to Congress and again, virtually nothing has been done.

Under the new majority, Senator Jeff Flake (R-AZ) and I introduced an Authorization for Use of Military Force against ISIL in June, 10 months from the day of the start of the war, and we made it bipartisan. We didn’t attempt to solve everyone’s problems, we attempted to do a good-faith bipartisan version that would then be subject to amendment. In the two months since we’ve introduced it, we’ve had a few discussions in closed sessions in the Senate Foreign Relations Committee—but otherwise, silence.

So, what has one year meant? Well, to our institutions, one year of war against the Islamic State has transformed a president who was elected, in part, because of his early opposition to the Iraq War into an executive war president—maybe a perpetual war president.

One year of war against ISIL has stretched the 2001 Authorization for Use of Military Force that was passed to defeat the perpetrators of September 11 far beyond its original meaning or intent. In fact, I would argue that the Bush and Obama interpretations of the 2001 Authorization actually are 180 degrees different from what was intended. There was an authorization that the Bush administration tried to



get Congress to pass, right after 9/11, which said “We give the president the ability to take action against nations or organizations that want to harm the United States.” And even in the aftermath of 9/11, Congress was smart enough to say “Wait a minute—we’re not going to give you a blanket war authority. We will only approve the more narrow authorization that says you can take action against the perpetrators of 9/11.” But the administration gloss that the Bush administration put on this, that the Obama administration has

continued and even expanded, has transformed that authorization into exactly what Congress rejected two days after the 9/11 attacks.

One year of war has shown to all that neither Congress nor the president feels any obligation to follow the 1973 War Powers Resolution, which requires that the president cease any unilateral executive-initiated war within 90 days unless Congress votes to approve it. That statute is now completely shredded, and no one wants to follow it, or even pay attention to it.

And finally, one year of war has demonstrated that Congress would rather hide from its constitutional duty to declare war than have a meaningful debate about whether and how the United States should militarily engage against the Islamic State.

So how about that August recess thing? How can we go on the recess with a war going on? Well, that’s actually pretty easy: the part of the statute that creates an exception from the mandatory August recess only applies if there’s been a “declaration of war by Congress.” Because we haven’t even bothered to debate or vote on or authorize this war in the year since it’s started, we are still entitled by statute to have a 30-day August adjournment.

This is a topic I came to the Senate deeply interested in. During the vote around the Iraq war in 2002, I was the lieutenant governor of Virginia. The debate was pushed to two weeks before a midterm election, where the president’s party tends to lose. I was profoundly disturbed at that vote. It struck me—why are we having this debate two or three weeks

before a midterm election? It was political genius! That was one of the best midterms that a president ever had, two years in, but it was an entirely cynical exercise. That really got me thinking, “It’s got to be done better than this.”

So we need to pass an authorization for this military action against ISIL. This is, in my view, an illegal war right now. The president’s powers under Article II of our Constitution don’t support unilateral warmaking unless it’s in the imminent defense of the United States. But all the testimony has been that any threat to the United States is not imminent.

Meanwhile, the 2001 Authorization for Use of Military Force against those responsible for the 9/11 attacks clearly does not cover a war against ISIL. After all, ISIL is fighting against al Qaeda in a number of places.

What we need to do is revise the 2001 Authorization. It is now being interpreted as a blank check to allow war

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without geographic limitation, without temporal limitation. Administration witnesses that I’ve questioned have blithely said that they thought that the war authorized by the September 14, 2001, authorization would easily go on another 25 or 30 years. And that’s why Senator Flake and I introduced our amendment.

Fifteen years of war under an open-ended authorization should have taught us something. And it is my hope that after a year of an undeclared war, people will come to their senses and take this more seriously. ■

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SCHOLAR PROFILE

Thaya Brook Knight

THAYA BROOK KNIGHT is associate director of financial regulation studies at the Cato Institute. She is an attorney with extensive experience in securities regulation, small business capital access, and capital markets. Before joining Cato, she cofounded and served as general counsel of CrowdCheck, a company providing due diligence and disclosure services in the online investing market. Following the recent financial crisis, she served as investigative counsel for the Congressional Oversight Panel charged with overseeing the expenditure of Troubled Asset Relief Program (TARP) funds.

WHEN WERE YOU FIRST DRAWN TO LIBERTARIAN VIEWS?

I've always held libertarian views, although until recently I identified as a liberal Democrat. I believe in a strong First Amendment and strong protections for criminal defendants, I oppose the War on Drugs, and I support gay rights. In the wake of 9/11, I was horrified by the willingness to give up personal liberty in the name of safety. For a time, that meant my beliefs were aligned with the Democratic Party. But I'm also a feminist and it makes me angry when I'm told that, as a woman, I don't know how to make my own choices or that I should be protected from their consequences, like a child. If we're serious about equality, all adults must have the freedom and responsibility to order their lives as they see fit.

YOU SERVED AS INVESTIGATIVE COUNSEL FOR THE CONGRESSIONAL OVERSIGHT PANEL OVERSEEING TARP FUNDS—WHAT DID YOU TAKE AWAY FROM THAT EXPERIENCE?

What I took away was a sense of how superhuman a task it is to "fix" anything as big and complex as the U.S. economy. It's really beyond the powers of mere mortals. I worked closely with many of the key architects of the various TARP programs, and they were overwhelmingly highly intelligent, dedicated individuals who earnestly wanted to save the country. But even they lacked the ability to foresee how the programs would work in practice, or to make the right choices all the time. Financial regulators are at their best when they approach their work

with a sense of humility and awe. The markets reflect thousands of decisions being made daily by thousands of people; it's impossible to understand completely the effect one regulation or another might have on the entire system. I didn't appreciate this fully until I saw the harm good-intentioned people could do when they tried to do too much.

EARLIER THIS YEAR, YOU WROTE THAT "NOT EVERY PERSON ON WALL STREET IS A MORALLY CORRUPT GORDON GEKKO." WHY DO WE NEED WALL STREET?

That's like asking why we need gasoline or electricity. Wall Street makes everything else go. Oftentimes we think only of the stocks and bonds being traded on Wall Street without thinking about why they're being traded, or what those trades accomplish. As I said in that piece, companies sell stock and bonds when they need money to do things—develop a new product, introduce their products to a new market, build a new facility, hire staff. These activities obviously fuel economic growth and job creation, which are worthwhile in themselves. But they also result in technological innovation and scientific discovery. Without Wall Street, we wouldn't have many of our life-saving drugs, our pocket-sized computers, the ever-increasing efficiency and safety of our cars, or any of the things that make modern life so comfortable and so safe. Sure, some people get very rich trading on Wall Street, but that's ultimately a good thing, given the benefits we all reap. ■

Investing in Freedom

A girl who'd recently inherited a modest sum from her grandfather once asked the late Sir John Templeton when to invest. In reply, the esteemed businessman famously deadpanned, "Young lady, the best time to invest is when you have the money." Savvy investors who take a long-term view would undoubtedly agree.

With that said, now is a marvelous time to make an investment in the Cato Institute. Six months into his tenure, Cato's president and CEO, Peter N. Goettler, is settling into his new role and the Institute is in great shape.

As you may have read, Peter joins us from the banking sector, where he worked for leading financial institutions, including Salomon Brothers, Merrill Lynch, and Barclays Capital. Educated at MIT, Peter has distinguished himself as a dynamic strategist and manager who ultimately served as the chief executive officer for Barclays's business in Latin America and head of Global Loans and Global Leveraged Finance. A Cato supporter for more than 15 years, Peter joined our board of directors in 2014.

Having spent a career in the banking sector, Peter chose to embark on the next chapter of his life in 2008, travelling the world to meet with champions of a growing global freedom movement. Their efforts to achieve lasting change through market-liberal policy solutions taught him a great deal. He witnessed firsthand what human beings can accomplish when basic rights are protected, the range of personal choice is extended, and the central role of economic freedom is championed. These lessons reflect a broader truth espoused by Cato scholars—lasting economic growth is best achieved by removing personal, civil, and political shackles on innovators and entrepreneurs.



Peter decided to dedicate his life's work to an institution that played a vital role in the evolution of his personal philosophy. He chose to invest his time and talent to lead Cato forward—taking the reins during a period of notable accomplishment and momentum. Largely because of Cato's growth and achievement, libertarianism is now recognized as an important and relevant political philosophy. The growth in relevance of libertarian principles and Cato's influence in the public policy community has been reflected by record financial returns. Since 2012, Cato's financial support has grown each consecutive year. Increased resources have reinforced Cato's efforts to push back against the burdens of expansive government through vigorous research, inquiry, and debate. But while we are proud of what has been achieved, we are mindful of work yet to be done. Peter looks forward to teaming with the Institute's distinguished staff and Cato Sponsors to help assure a free and prosperous society for future generations.

People express their commitment to the goals of liberty in many different ways. For his part, Peter Goettler chose to assume leadership of the Cato Institute. Some of you may find that another way to accomplish this ambition is to designate Cato as the beneficiary of all or part of your retirement plan. Others—having provided for loved ones—will make a bequest to Cato by including language in their will or living trust leaving a portion of their estate to the Institute. One thing is certain: an investment made in Cato today will help fund a future of freedom. ■

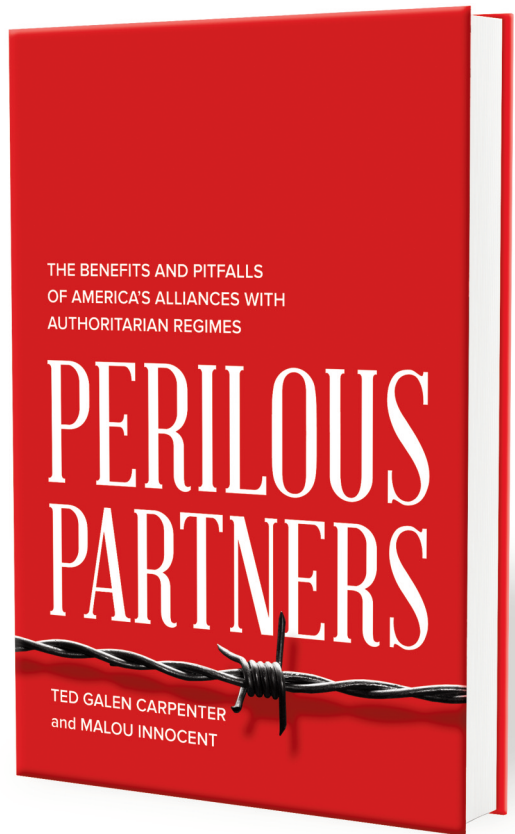
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NEW FROM THE CATO INSTITUTE

How do we resolve the dilemma of securing important American foreign policy objectives without betraying basic American values and making ethical compromises?

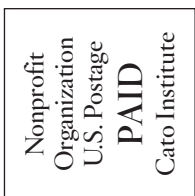
American leaders have cooperated with regimes around the world that are, to varying degrees, repressive or corrupt. Such cooperation is said to serve the national interest. It also often contravenes the nation's commitments to democratic governance, civil liberties, and free markets. In *Perilous Partners*, authors Ted Galen Carpenter and Malou Innocent offer case studies of U.S. engagement with dubious allies, and show that too often American leaders have sacrificed the moral high ground in pursuit of secondary and peripheral national interests.

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