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TAKE THREE: THE 1973 WAR POWERS RESOLUTION

War and the Demos: The War Powers Resolution in the Context of the Draft's Demise

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The War Powers Resolution (WPR) of 1973 nominally aimed to limit the president's war powers by ensuring that the "collective judgment" of both Congress and the president should determine the entry of U.S. forces into hostilities.¹ And yet, the bill implicitly allowed presidents to undertake military action for up to sixty days even without congressional license.² Newly elected House member Elizabeth Holtzman (D-NY), who voted against the bill, did so because she realised its language would mean that in "actual effect" it could facilitate months of war "initiated solely by the President."³ There were protests from the right too. Republican Senator Barry Goldwater (R-AZ) expressed concern that the bill would prevent the president from acting "with speed and directness."⁴ This has not turned out to be the case. In the decades since, U.S. presidents used military force in various instances without waiting for formal congressional approval.⁵ Accordingly, historians and legal scholars define the WPR as a "weak effort" that "has not worked," and became a "dead letter."⁶

As a bill intended to limit presidential war-making powers, the law certainly failed. But failures can be telling. The bill, which was so popular it enjoyed overwhelming bipartisan backing and overcame a presidential veto, can tell us a lot about how American lawmakers remade the relationship between war and the demos in 1973. It is striking that, as a piece of political theater, the 1973 War Powers Resolution provided an opportunity for American lawmakers to signal deep and considered civic engagement in the nation's wars at the exact same moment when they also ended the draft and pushed military labor away from the concerns of the middle class. The 1973 establishment of the All-Volunteer Force (AVF) promised Americans they would no longer need to worry about the demands the military might make on them—unless they volunteered to serve. The temporal proximity of these two measures suggests we should consider them in tandem: as elements within a broader revision of Americans' relationships to military labor and to war.

With the establishment of the AVF, Americans freed the middle class from the worries of obtaining deferments. Under the guidance of the neoliberal economists who led the reform, military service was recast as one employment alternative within the broader marketplace.

¹For the full text of the 1973 War Powers Resolution, see: H.J. Res 542–93 Congress (1973–74), <https://www.congress.gov/bill/93rd-congress/house-joint-resolution/542/text> (accessed Feb. 10, 2023).

²For the contradictions within the WPR, see Sarah McKenzie Burns, *The Politics of War Powers: The Theory and History of Presidential Unilateralism* (Lawrence, KS, 2019), 179–81.

³Elizabeth Holtzman, "The War Powers," *New York Times*, Aug. 3, 1973, 31. Senator Thomas F. Eagleton (D-MS) argued along the same lines. See Thomas F. Eagleton, "A Dangerous Law," *New York Times*, Dec. 3, 1973, 39.

⁴Barry Goldwater, "Senator Goldwater on War Powers," *Washington Post*, Dec. 6, 1973, 31.

⁵Mary L. Dudziak, *War Time: An Idea, Its History, Its Consequences* (New York, 2012), 26.

⁶Michael S. Sherry, *In The Shadow of War: The United States Since the 1930s* (New Haven, CT, 1995), 332; John Hart Ely, "Suppose Congress Wanted a War Powers Act that Worked," *Columbia Law Review* 88, no. 7 (Nov. 1988): 1381; Andrew Bacevich, "Gulliver at Bay: The Paradox of the Imperial Presidency," *Iraq and the Lessons of Vietnam, or, How Not to Learn from the Past*, eds. Lloyd B. Gardner and Marilyn B. Young (New York, 2007), 125.

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The incentives of the broader citizenry to pay attention to the actions of the military acting in its name were accordingly reduced. Already during the decades of the Selective Service System, many middle-class American men managed to avoid combat roles and very often military service altogether.⁷ But 1973 represented a decisive break: once the overhanging threat of the draft that had long loomed over young American men was removed, replaced by what President Nixon defined as “maximum freedom for the individual,” Americans could make life choices without worrying about being drafted.⁸ Military labor, which included the enactment of military violence, receded from the immediate concerns of the public at large.⁹

Within that context, some contemporaries worried about the implications ending the draft would have on democratic governance. In a February 1973 *Chicago Tribune* piece provocatively titled “Will Volunteer Military Work? Does Anyone Care?,” Loyola University sociologist Sam Sarkesian argued that “in trying to bring ‘justice’ to the idea of military service, society may well have created a situation which will increasingly isolate the military from the influences of society.”¹⁰ Sarkesian concluded on a pessimistic note that it “would be disastrous if [...] society were to let the military go its own way.”¹¹

Sarkesian was not alone: the worry that the volunteer military would separate society from its fighting force was voiced as early as 1966, when the volunteer military was still far from gaining significant traction among policymakers. But attitudes towards the draft changed swiftly in the late 1960s and early 1970s.¹² Rejection of the draft, once limited to draft resisters and draft-card burners, was, by 1973, supported broadly: both Republican Hawk Barry Goldwater and Democrat Dove George McGovern (D-SD) backed the AVF.¹³ Within Nixon’s political calculus, the promise to end the draft emerged out of the combined effort

⁷The draft was active during the period 1940–1973 except for a brief window between 1947 and 1948. During these decades, middle-class Americans had easier access to deferments and channelling—often keeping them away from the military and from the most dangerous or difficult assignments in the service. And yet, even those deferred had to make life decisions in the knowledge that should their terms of deferment break they would be vulnerable to the draft. On the class bias within the draft system, see Christian Appy, *Working Class War: American Combat Soldiers and Vietnam* (Chapel Hill, NC, 1993); and Amy Rutenberg, *Rough Draft: Cold War Military Manpower Policy and the Origins of the Vietnam-Era Draft Resistance* (Ithaca, NY, 2019).

⁸See Richard Nixon, “Special Message to the Congress on Draft Reform,” Apr. 23, 1970, The American Presidency Project, <https://www.presidency.ucsbl.edu/node/239692> (accessed Apr. 29, 2023).

⁹For elaborations on the public’s disengagement, see Andrew Bacevich, *Breach of Trust: How Americans Failed their Soldiers and their Country* (New York, 2013); Michael J. Robbilar and Bradley J. Strawser, *Outsourcing Duty: The Moral Exploitation of the American Soldier* (New York, 2022); and James Fallows, “The Tragedy of the American Military,” *The Atlantic*, Jan./Feb. 2015, <https://www.theatlantic.com/magazine/archive/2015/01/the-tragedy-of-the-american-military/383516/> (accessed on Feb. 27, 2023).

¹⁰Sam C. Sarkesian, “Will Volunteer Military Work, Does Anyone Care?” *Chicago Tribune*, Feb. 11, 1973, A1.

¹¹Ibid. Arthur Schlesinger went further than Sarkesian, warning that Nixon chose to establish the AVF because a “professional army is by definition a much more compliant and reliable instrument of presidential war.” See Arthur Schlesinger, *The Imperial Presidency* (Boston, 1973), 199. My thanks to Andrew Preston for that suggestion. See Preston’s contribution to this forum for more on Schlesinger’s book.

¹²Polling data traced some of the movement in public opinion to back the AVF. In January 1969, a Gallup poll found the public opposed the idea of a volunteer force 2-to-1. By early 1970, a Harris poll found that 52 percent of Americans supported the volunteer army plan. See George Gallup, “All-Volunteer Army Proposal Is Opposed by Public, 2 to 1: The Gallup Poll,” *Washington Post*, Jan. 26, 1969, 5; and Don Oberdorfer, “Little-Known Nixon Adviser Sparked Volunteer-Army Drive,” *Washington Post*, Mar. 12, 1970, A19. Interestingly, even while endorsing the draft’s end, the public remained resistant to giving amnesty to those who escaped the draft. See “Poll Finds Shrinking Majority Still Opposes Amnesty on Draft,” *New York Times*, Apr. 21, 1974, 12.

¹³On draft resisters, see Michael S. Foley, *Confronting the War Machine: Draft Resistance during the Vietnam War* (Chapel Hill, NC, 2002), 9. On growing support to ending the draft on the right, see “Nine Senators Propose Bill to Abolish Draft,” *New York Times*, Jan. 23, 1969; Sandra Scanlon, *The Pro-War Movement: Domestic Support for the Vietnam War and the Making of Modern Conservatism* (Amherst, MA, 2013), 245–6; and John A. Andrew III, “Pro-War and Anti-Draft: YAF and the War in Vietnam,” in *The Vietnam War on Campus: Other Voices, More Distant Drums*, ed. Marc Jason Gilbert (Westport, CT, 2001), 1–19.

to silence antiwar dissenters and appease young voters.¹⁴ Upon entering office in 1969, Nixon assembled the Commission on the All-Volunteer Armed Force (known as the Gates Commission), which submitted its recommendations in February 1970. Driven by the neoliberal economists that made up the commission's senior staff as well as those within its ranks, including Milton Friedman, W. Allen Wallis, and Alan Greenspan, the commission framed the draft as an implicit tax that Americans had to be liberated from to guarantee individual freedom.¹⁵

The purpose of the Gates Commission was not to question if the AVF was a good idea, but to facilitate the transition to it: the very first internal study circulated to commission members in 1969 committed to "the development of a plan for the transition to, and the subsequent maintenance of, an all-voluntary military establishment," with only a nod to "also take cognizance of the objections to such a force."¹⁶ In that tokenistic spirit, the commission's published report a year later recognized the worry that without a draft the military would become "isolated from society."¹⁷ Responding to that concern, the report emphasised the role of Congress as "budgetary and legislative overseer."¹⁸ Clearly, the Commission could not have foreseen that the War Powers Resolution would become law three years later. And yet, the commission found it useful to prop up the notion of a robust legislator to rebuff complaints that the undrafted demos would become disconnected from military affairs.

The War Powers Resolution allowed legislators to create an assuring spectacle of concerned elected officials keeping a close watch on military affairs on behalf of the public. On February 10, 1972, Senator Jacob K. Javits (R-NY), one of the sponsors of the WPR, told readers of the *New York Times* that the bill would restore "to Congress and to the people a meaningful role on the question of peace and war."¹⁹ When stating (with a nod to the Vietnam War) that concentrating "the essential power of war and foreign policy in the institution of the Presidency" created "a costly failure which strained our whole society," Javits's words also offered comfort: distancing both Congress and the American people from that disastrous campaign—leaving it wholly at the feet of the executive.²⁰ After the proposal overcame presidential veto in November 1973 to become law, the *Washington Post* celebrated a "national victory" that assured that any future decision to go to war would "reflect national will."²¹ National mood,

¹⁴On the political interests and considerations shaping the shift to the All-Volunteer Force, see Beth Bailey, *America's Army: Making the All-Volunteer Force* (Cambridge, MA, 2009), 23–33; and Bernard D. Rostker, *I Want You: The Evolution of the All Volunteer Force* (Santa Monica, CA, 2006). Economist Martin Anderson, the leading figure in the Nixon White House on the transition to the All-Volunteer Force, framed the repealing of the draft as one of two major issues through which Nixon can appeal to the "youth vote" when seeking re-election. The other one was expanding that voting block by lowering the voting age to eighteen. See Martin Anderson to John Ehrlichman, July 13, 1970, "Youth: Campus Unrest, the Draft and the 18-Year-Old Vote," All Volunteer Armed Force Folder 3, Box 37, Martin Anderson Papers, White House Central Files, Richard Nixon Presidential Library, Yorba Linda, CA [hereafter RNPL]. On the effects of rampant dissent on the military, see David Cortright, *Soldiers in Revolt* (New York, 1975).

¹⁵Bailey, *America's Army*, 29–31.

¹⁶See "Discussion Paper and Preliminary Outline for the All-Voluntary Army Study," page 1, 1969, All Volunteer Armed Force Folder 2, Box 37, Martin Anderson Papers, White House Central Files, RNPL.

¹⁷President's Commission on an All Volunteer Armed Force, *The Report of the President's Commission on an All Volunteer Armed Force* (Washington DC, 1970), 129, <https://www.nixonfoundation.org/wp-content/uploads/2012/01/The-Report-Of-The-Presidents-Commission-On-An-All-Volunteer-Armed-Force.pdf> (accessed Feb. 28, 2023).

¹⁸*President's Commission on an All Volunteer Armed Force*, 130.

¹⁹Jacob K. Javits, "The Balance in the War Powers Bill," *New York Times*, Feb. 14, 1972, 29.

²⁰*Ibid.* The findings of political scientist Kelly McHugh show that during the war, "Congress appeared to do little to encourage the president to bring the war to an expeditious end." See Kelly McHugh, "Understanding Congress's Role in Terminating Unpopular Wars: A Comparison of the Vietnam and Iraq Wars," *Democracy and Security* 10, no. 3 (July–Sept. 2014): 210.

²¹"War Powers Legislation: A National Victory," *Washington Post*, Nov. 9, 1973, A30.

at least in the simplified form of a survey, confirmed an overall sense of satisfaction: a Gallup poll showed that 80 percent of Americans favored the law.²²

As it turned out, the WPR did not actually result in Congress mobilizing to curb the president's steps. The main effects of the bill have been procedural: over the past fifty years, presidents shared with legislative leaders many updates about military interventions abroad.²³ And yet instances of congressional pushback against the executive were rare. There was limited political upside for representatives to go against a president when American troops were mobilized abroad. Journalist William S. White posed the rhetorical question in 1973: does anyone believe that "any Congress would really dare simply to blow the whistle at the end of the first quarter and announce that the fighting must now be called off?"²⁴ More recently, in 2014, representative Jack Kingston (R-GA) stated "[Congress members] like the path we're on now. We can denounce it if it goes bad, and praise it if it goes well and ask what took him so long."²⁵ Such an attitude helps explain instances when Congress allowed the executive a wide license for various military campaigns, such as the 2001 Authorization for Use of Force Against Terrorism, including the catastrophic invasion of Iraq in 2003. It has proven politically beneficial for members of Congress to comment on presidential action after the fact, rather than to risk taking responsibility for errors or failures.²⁶ Furthermore, seeing as defense contractors are major employers in various states, many members of Congress perceive military build-ups as serving their constituency's economic interests.²⁷

If the establishment of the All-Volunteer Force reduced the imprints that war making left on the demos, gratifying the public but also raising concerns of the loss of democratic oversight, the War Powers Resolution appeared to increase democratic engagement in war-making decisions. But seen through a different lens, the two measures complemented one another within a larger historical process in which Americans devised ways not to make war less likely, but to make war more palatable to their sensibilities. By ending the draft, the AVF promised that war making would not impinge on the personal lives of middle-class Americans.²⁸ By creating the appearance of meaningful oversight and robust checks and balances, the WPR propped up a promise of considerate due process in war making without actually rendering military engagement less likely. Michael Sherry's discussion of the 1991 American invasion of Iraq provides a clue as to how the public acts of deliberating and discussing helped shape war as the logical endpoint: "Even the striking rhetorical and substantive flair of Congress's debate seemed to lubricate the path to war, as if by being high-toned and troubled about it, Americans proved their maturity, their readiness to take on this serious burden."²⁹ Over time the joint effect of these policies was not to make war less likely, but to make war easier to swallow—through

²²George Gallup, "War Limits Supported," *Washington Post*, Nov. 18, 1973, A12.

²³*The War Powers Resolution Reporting Project*, Reiss Center on Law and Security at New York University School of Law, <https://warpowers.lawandsecurity.org/findingsandanalysis/> (accessed Jan. 30, 2023).

²⁴See William S. White, "The War Powers Bill: 'A Flagrant Sham,'" *Washington Post*, Nov. 10, 1973, A19.

²⁵See Jonathan Weisman, Mark Landler, and Jeremy W. Peters, "As Obama Makes Case, Congress Is Divided on Campaign Against Militants," *New York Times*, Sept. 8, 2014, as quoted in Burns, 234.

²⁶See Burns, *The Politics of War Powers*, 180.

²⁷*Ibid.*, 206. See also Julian E. Zelizer, "Congress and the Politics of Troop Withdrawal," *Diplomatic History* 34, no. 3 (June 2010): 539.

²⁸Aside the elimination of the draft, other developments helped render war easier for Americans to accept. Technological advancements in the remote delivery of violence (as with attack drones) helped "remove the person" from the emotional equation of war, "creating a vast physical and psychological distance between the launching of a strike and its bloody impact." See David Cortright and Rahcel Fairhurst, "Assessing the Debate on Drone Warfare," in *Drones and the Future of Armed Conflict: Ethical, Legal, and Strategic Implications*, eds. David Cortright, Rahcel Fairhurst, and Kristen Wall (Chicago, 2015), 10. Moreover, the expansion of American commitments to undertake "humane" warfare, helped accommodate Americans to endless war. See Samuel Moyn, *Humane: How the United States Abandoned Peace and Reinvented War* (London, 2022).

²⁹Sherry, *In the Shadow of War*, 468.

detachment from military labor (the AVF) and through the lubrication of correct procedure (WPR).

Commenting on war weariness among Americans in the immediate post-Vietnam War period, historian Marilyn B. Young alluded to “a serious lack of blood lust on the part of the public.”³⁰ Taken together, the 1973 War Powers Resolution and the establishment of the All-Volunteer Force that same year suggest that Americans indeed had little appetite for warfare. Crucially, however, as Young pointed out in the same sentence, a lustful public was not a necessary ingredient.³¹ What the 1973 moment created was a disengaged public. The demos became increasingly irrelevant in the pursuit of war. The formation of the AVF meant that war weariness would not greatly trouble mobilization. Indeed, the popularity of the AVF was rooted partially in the promise that the public would have little to be weary of, as it would be shielded from involuntary participation. Meanwhile the War Powers Resolution created a chimera of procedural correctness in democratic governance—propping up the promise that Americans’ elected representatives enacted meaningful checks and balances on war making on the public’s behalf. After 1973, the twin promises of procedural oversight and free choice made war easier for Americans to live with.

³⁰Marilyn B. Young, “Foreword,” in *Imagination: The American Counter Culture of the 1960s* (New York, 2001), 3.

³¹*Ibid.*, 3.