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From the SelectedWorks of Seth Barrett Tillman

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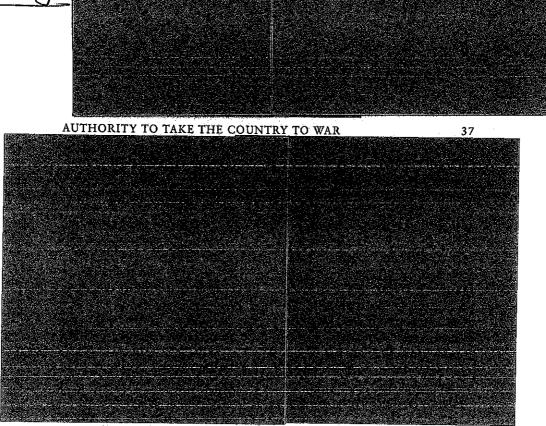
Extract from Mariah Zeisberg, War Powers: The Politics of Constitutional Authority (2013), citing Tillman's Noncontemporaneous Lawmaking

Seth Barrett Tillman



Available at: https://works.bepress.com/seth_barrett_tillman/385/

Zeisberg



Finally, a strength of legislative governance is its capacity to mobilize vast quantities of information through hearings, testimony, research services, and the subpoena power. Congress's ability to pool and weigh information from multiple sources, and to generate large understandings of public policy on the basis of complex information, is yet a fourth strength of legislative governance.

When Congress exercises its powers—declaring or authorizing war (whether for defensive purposes or as an instrument of policy), issuing supportive resolutions, challenging presidential agendas, using public hearings to shape dynamics of war authority in practice, advancing interpretive positions on constitutional matters of war—in ways that are connected to its relative governance strengths, it generates more constitutional authority for its behavior. As with the presidency, we should recognize that the legislature has more than one route toward harnessing its distinctive capacities.¹⁰¹ Given that there are several different ways for the

101 See, e.g., Josh Chafetz, "The Unconstitutionality of the Filibuster," Connecticut Law Review 43: 4 (2011): 1003-40; David R. Mayhew, "Supermajority Rule in the U.S. Senate," PS: Political Science and Politics 36: 1 (2003): 31-36; Neal Kumar Katyal, "Internal Separation of Powers: Checking Today's Most Dangerous Branch from Within," The Yale Law Journal 115:9 (2006): 2314-49; Bruce Ackerman and Oona Hathaway, "Limited War and the Constitution: Iraq and the Crisis of Presidential Legality," Michigan Law Review 109:4 (2011): 447-518; Seth Barrett Tillman, "Noncontemporaneous Lawmaking: Can the 110th Senate Enact a Bill Passed by the 109th House?" Cornell Journal of Law and Public Policy 16:2 (2007): 331-47; Aaron-Andrew P. Bruhl, "Burying the 'Continuing Body' Theory of the Senate," Iowa Law Review 95:5 (2010): 1401-65; Gary Mucciaroni and Paul J. Quirk, Deliberative Choices: Debating Public Policy In Congress (Chicago: University of Chicago Press, 2006).