

National University of Ireland, Maynooth

From the Selected Works 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



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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).