



Written by [John F. McManus](#) on September 20, 2014

Does Obama Skirt the Constitution? Ask This Yale Professor

Americans across the country are finally awakening to the fact that the federal government does indeed operate outside of its limitations. A case in point is Bruce Ackerman, professor of law and political science at Yale University. Because of President Obama starting a war with ISIS, he finally understands that the president has violated the U.S. Constitution.



The Yale professor rightly complains that the president's decision to make war against ISIS amounts to a unilateral assumption of power. OK, but the professor then says that the president's unilateral action "marks a decisive break in the American constitutional tradition," adding that "nothing attempted by his predecessor, George W. Bush, remotely compares in imperial hubris." Does this mean that Ackerman would go along with Mr. Obama's decision if he had consulted with and received approval — not a declaration of war — from Congress for military action against the Islamist militants?

Curiously, the Obama team claimed that decision to go to war against ISIS was acceptable because Congress had authorized the use of military force against al-Qaeda after the 9/11 attack, and new approval for such action wasn't needed. In other words, a past congressional stamp of approval for war that was not a formal declaration of war as required by the Constitution can serve as a legitimate go-ahead for whatever action is desired even a decade later. And the new target of the military doesn't even have to be the one named in the previous congressional authorization. If that's the case, then any real or supposed enemy can be targeted by simply citing this past congressional action.

Let us point out to the professor that the Constitution states in Article I, Section 8, Clause 11 that Congress has the power to "declare war." Nowhere else in the document is such authority granted to any other portion of the government. Partisans who want the president to have such power point to the Constitution's naming the occupier of the White House as "commander in chief of the Army and Navy." This designation should never be considered the equal of the explicit grant of power solely to Congress to declare war. In other words, the nation's military arm is not the president's possession to use as he desires. The sole grant of war-making power to Congress completely outweighs the mere designation of who shall be the commander of forces once a war starts. One would think that a law professor would know this.



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The last congressional use of its constitutional authority to declare war occurred immediately after the Japanese attack at Pearl Harbor in 1941. Formal declarations of war were approved by Congress against Japan, Germany, and Italy. And the United States won against each of those struggles. No declarations of war were approved regarding subsequent wars in Korea, Vietnam, Bosnia, Iraq, Afghanistan, and more. Can the United States claim victory in those contests, especially if we are still undergoing military operations in Iraq and Afghanistan?

Numerous presidents have sent small military detachments to rescue Americans in danger, reply swiftly to some outrage perpetrated against our nation, etc. And few, if any, disapproved of these moves and insisted that formal congressional declarations were needed. But war is something else and, according to the Constitution, if there is to be one, it must be formally declared.

If prominently placed professors of law and political science, who should already understand the Constitution but don't, are waking up, then we should use this as an opportunity to further engage them and others on obeying the Constitution, returning the federal government to its constitutional limitations, and stop policing the world with authorization supplied by the United Nations or its NATO subsidiary. A return to the Constitution's easily understood passages regarding war is long overdue.

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