

Contact: Alfred Blumrosen
Professor of Law Emeritus
917-670-8878
Steven Blumrosen
917-670-8847

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Rutgers Law Review Article Declares All Wars Since World War II Unconstitutional

Newark, NJ, July 26, 2011 – A detailed [article](#) in the upcoming issue of the *Rutgers Law Review* (63:2) has challenged the Constitutionality of all the wars fought since World War II, because they have not been declared by Congress. Instead, Congress has allowed the President to decide on war.

Rutgers School of Law–Newark Professor Emeritus Alfred W. Blumrosen and Steven M. Blumrosen, the authors of “Restoring the Congressional Duty to Declare War,” rely not only on the language of the Constitution that “Congress shall have the power to declare war” but also on the debates in the Constitutional Convention that began June 1, 1787. On that day, Charles Pinckney from South Carolina made clear that he opposed giving the power of war to the President because that would render him “a Monarchy of the worst kind, to wit an elective one.”

The Convention took two votes. The first put the power of war in the Congress and the second prohibited the Congress from transferring that power to the President. In the following weeks all but one member of the Convention joined Pinckney in the conclusion that Congress, and not the President, should declare war.

Later in the convention, after Pinckney pointed out that Congress might not be in session when the country was attacked, the Convention provided that the Congress could allow the President to call out the state militias in cases of insurrection, invasion, or resistance to federal laws. Congress later implemented its power by declaring a limited war on France for seizing seamen from American ships under claims that they were French. In 1880 the Supreme Court approved this procedure by interpreting the Declare War clause as encompassing “any contention by force” with another country, including both full-scale wars and limited wars. But the events at the Convention and the early Supreme Court opinions were not considered by Congress and the lower Federal Courts when the president was allowed to determine on war in Vietnam in 1964 and against Iraq in 2003.

The authors found that the Federal judicial system had ignored the decision of the Constitutional Convention and the early Supreme Court opinions. They participated in a case against President Bush (*NJ Peace Action, et al v. President Bush*, changed by the Court to recognize President Obama), which demonstrated that, in 2010, the federal courts were continuing to ignore the Constitution. Based upon their findings, the authors recommend that there be additional litigation.

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