

War and the Constitution

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Can the president fight any war he wishes? Can Congress fund any war it chooses? Are there constitutional and legal requirements that must first be met before war is waged? Can the United States legally attack an ally?

These questions should be front and center in a debate over the U.S. involvement in Ukraine. Sadly, there has been no great debate. The media are mouthing what the CIA is telling them, and only a few websites and podcasts — my own, "Judging Freedom" on YouTube, among them — are challenging the government's reckless, immoral, illegal and unconstitutional war.

All power in the federal government comes from the Constitution and from no other source. Congress, however, has managed to extend its reach beyond the confines of the Constitution domestically by spending money in areas that it cannot regulate and purchasing compliance from the states by bribery.

Examples of this are the numerical minimum blood alcohol content to trigger DWI arrests, and maximum speed limits. In both instances, Congress offered money to the states to pave highways provided they lower both numbers, and the cash-strapped states accepted the money along with congressional strings. These are bribes from the criminal consequences of which Congress has exempted itself.

The same takes place in foreign policy. Congress cannot legally declare war on Russia, since there is no militarily-grounded reason for doing so. Russia poses no threat to American national security or American persons or property. Moreover, the U.S. has no treaty with Ukraine that triggers an American military defense. But Congress spends money on war nevertheless.

Under the Constitution, only Congress can declare war on a nation or group. The last time it did so was to initiate American involvement in World War II. But Congress has given away limited authority to presidents and permitted them to fight undeclared wars. Examples of

this are President George W. Bush's disastrous and criminal invasions of Afghanistan and Iraq, and the War Powers Resolution of 1973.

Congress has not only not declared war on Russia; it has not authorized the use of American military forces against it. Yet, it has given President Joe Biden a blank check for \$100 billion and authorized him to spend it on military equipment for Ukraine however he sees fit.

He has promised to continue giving Ukraine whatever it needs for "as long as it takes." As long as it takes to do what? He cannot answer that because he has no clear military objective. Eliminating Russian troops from Ukraine and Crimea or Russian President Vladimir Putin from office are not realistically attainable military goals.

Congress has only authorized weapons and cash to be sent to Ukraine, but Biden has sent troops as well. The U.S. involvement in Vietnam began the same way: no declaration of war, no authorization for the use of military force, yet a gradual buildup of American troops as advisers and instructors, and then a congressionally supported war that saw half a million American troops deployed, 10% of whom came home in body bags.

We don't know how many American troops are in Ukraine, as they are out of uniform and their whereabouts a secret. We do know that they are involved in hostilities, since much of the hardware that Biden has sent requires American know-how to operate and maintain. And some of the weaponry has American troops actually targeting Russian forces and pulling the triggers.

Are American soldiers killing Russian soldiers? Yes. None of it has been authorized by Congress, but Congress has paid for it in borrowed dollars.

Now back to the Constitution. The War Powers Resolution, which requires presidential notification to Congress of the use of American military force, is unconstitutional because it consists of Congress giving away one of its core functions — declaring war. The Supreme Court has characterized delegating away core functions as violative of the separation of powers.

Nevertheless, Biden has not informed Congress of his intentions to use American troops violently. Yet, he has used the Navy and the CIA to attack Germany — a war crime and a violation of the NATO treaty — and he has soldiers out of uniform in Ukraine, so as to perpetuate the deception that boots are not on the ground.

Don't be surprised if Biden gives War Powers Act notice secretly to the Gang of Eight. What's that? The Gang of Eight is the Congress within the Congress. It consists of the chairs and ranking members of the House and Senate Intelligence Committees and the Republican and Democratic leaders of the House and Senate with which the president legally shares secrets.

Just as Congress cannot delegate away its war-making powers to the president, it cannot delegate them away to the Gang of Eight. The concept of the Gang of Eight is antithetical to democratic values. Informing them of whatever violence the president is up to is done under an oath of secrecy. What kind of democracy operates and kills in secret?

The various treaties to which the U.S. is a party limit its war-making to that which is defensive, proportional and reasonable. So, if a foreign power is about to strike — like on 9/11, while the government slept — the president can strike first in order to protect the U.S.

Beyond an imminent attack, the basis for war must be real, the adversary's anti-U.S. military behavior must be grave, the objective of war must be clear and attainable, and the means must be proportionate to the threat.

Has Russia threatened the U.S.? No. What grave acts has the Russian military committed against the U.S.? None. What is Biden's objective? He won't say.

Does the Congress uphold the Constitution? Does the president? The answers are obvious. We have reposed the Constitution for safekeeping into the hands of those who ignore it. The consequences are death, debt and the loss of personal liberty.

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