



Colloque international "Paix et constitutions", le 20 et 21 Septembre 2012 à Dijon

-résumés des interventions-

Peace, War Powers, and the American Constitution

par Robert F. TURNER

Virginia School of Law

The American Constitution departed from the teachings of Locke, Montesquieu, and Blackstone by giving both chambers of the legislature a “negative” over decisions to launch large-scale aggressive wars (“to declare war”). As Thomas Jefferson put it in a 1791 letter to the U.S. Charge d’Affaires in France: “If there be one principle more deeply rooted than any other in the mind of every American, it is that we should have nothing to do with conquest.” It worked well in the nineteenth century—for example, keeping President Jackson from attacking France in 1834 to compel payment of debts incurred by Napoleon.

In the twentieth century, France and the United States played prominent roles both in outlawing force as an instrument of national policy through the Briand-Kellogg Treaty and in the drafting and implementation of the UN Charter, which calls upon Members to preemptively “take effective collective measures for the prevention and removal of threats to the peace”—recognizing Sun Tzu’s wisdom that it is preferable to subdue the enemy without fighting than to win 100 victories in 100 battles.

But in the 20th century, Congress often exceeded its proper constitutional role and undermined efforts to deter aggression (e.g., through a series of “neutrality” and “war powers” acts in the 1930s that emboldened Hitler, and subsequent interference in Indochina and in Lebanon—which helped provoke the 9/11 attacks).

This paper will examine these and other examples and discuss the “democratic peace.”

* * *