

Obama Rips Up The Constitution

by Jeffrey Steinberg

June 27—President Barack Obama has not only committed an impeachable offense in refusing to seek Congressional authorization for his military folly in Libya. The evidence now overwhelmingly shows that his violation of Article I, Section 8 of the U.S. Constitution was a willful act, taken with full and conscious intent to rip up one of the most fundamental features of the U.S. Federal system of checks and balances: Congress's exclusive authority to declare war.

Even before the *New York Times* confirmed on June 18 that Obama had rejected the advice of both the Justice Department's Office of Legal Counsel (OLC) and the general counsel to the Secretary of Defense, it was clear that the President had determined to extend the U.S. military involvement in Libya as a unilateral act, without seeking the Congressional approval demanded under the War Powers Resolution (WPR) of 1973.

Senior U.S. intelligence officials, with close ties to the Obama White House, report that the President, along with senior advisor Samantha Power and United Nations Ambassador Susan Rice, determined to bypass Congress, in order to set a precedent for U.S. intervention, under the doctrine of "humanitarian interventionism," now referred to as "R2P" ("Responsibility to Protect").

Another longstanding proponent of the R2P assault on national sovereignty is State Department General Counsel Harold Koh. Koh is a longtime ally of British megaspeculator George Soros, who served through the mid-2000s on the board of Soros's Human Rights Watch NGO. As an Assistant Secretary of State under Madeleine Albright in the 1990s, Koh was an apologist for the Colombian narcoterrorist FARC, and a hard advocate of human rights sanctions against the Colombian military, at the peak of the FARC insurgency.

Koh advised President Obama that he should bypass Congress on the Libya operation, and the Pres-

ident used Koh's recommendations as a pretext for bypassing the Pentagon, and especially, the OLC. While there is no binding law, no previous President has ever rejected the Office of Legal Counsel's recommendations on Constitutional issues, such as the use of force.

Not only is Obama committed to the overthrow of Libyan leader Muammar Qaddafi, an action that far exceeds the limited mandate given by the UN Security Council, he is out to bully Congress into conceding to the President the authority to conduct regime change military operations without ever having to seek legislative approval.

His crimes, in this regard, exceed even the "high crimes and misdemeanors" standards for impeachment. They represent an assault against the entire Westphalian system of national sovereignty and the UN Charter, which bans preemptive and preventive war. For Obama, Power, Rice, and Koh, the Westphalian system of national sovereignty is a relic of the past, that must be overturned.

This is the larger significance of the ongoing Libyan crime of President Obama.

Transparent Lies

The White House has resorted to transparent lies, in making the case for bypassing Congress in pursuit of the Qaddafi overthrow. According to the President's men, the U.S. involvement in the ongoing Libyan military operations has been so reduced, as to be below the threshold for the War Powers Resolution. As *EIR* reported last week, the War Powers Resolution is clear: Any military action by an international coalition involving American commanders must be approved by Congress after 60 days. The White House argument that the WPR no longer applies because the mission was "handed off" to NATO before the 60-day deadline was reached, is pure sophistry. The Commander-



White House/Pete Souza

White House sources report that the President, spurred on by advisor Samantha Power (left) and UN Amb. Susan Rice (center), were determined to bypass Congress on the Libya War; to set a precedent for U.S. intervention, under the doctrine of "R2P" ("Responsibility to Protect").

in-Chief of NATO is American Adm. James J. Stavridis, who also is head of the U.S. Eurcom (European Command).

Obama has gone so far out on a limb, on behalf of the fraudulent doctrine of R2P, that a substantial portion of his own party has abandoned him on the Libya War adventure. The June 24 House of Representative vote on a resolution supporting the Libya mission, was defeated overwhelmingly on June 24—with 70 Democrats joining the vast majority of Republicans, to defeat the resolution 295-123.

During the debate on the resolution, which was identical to one first brought up in the U.S. Senate by John McCain (R-Ariz.) and John Kerry (D-Mass.), a bipartisan group of Representatives assailed the President for his efforts to rip up the Constitution, including Reps. Dennis Kucinich (D-Ohio), Ron Paul (R-Tex.), Lynn Woolsey (D-Calif.), Walter Jones (R-N.C.) and Jerrold Nadler (D-N.Y.). (See below for excerpts from the discussion.) Indeed, Speaker John Boehner (R-Ohio) had allowed the Kerry-McCain motion to come to a vote in the House, knowing full well that it would be defeated by a large bipartisan majority, thus preempting and undercutting the Senate's cowardly efforts.

A Self-Discrediting Stunt

While the House was delivering this crushing defeat to President Obama and the proponents of R2P, across Capitol Hill in the Senate, the mood of capitulation and cowardice was palpable. The Kerry-McCain resolution to back President Obama's continuing military engagement against Libya is, according to a senior U.S. intelligence source, aimed at averting a Constitutional crisis, and at providing the Federal courts with a pretext for shutting down the Federal lawsuit filed against the President on June 15—on the specious grounds that the Executive and Legislative branches were in the process of collegially resolving the differences. In effect, the Kerry-McCain resolution, which is essentially identical to that defeated in the House, is aimed at giving Obama a Senate nod to rip up the Constitution; it is also an attempt to shortcut the Federal courts from upholding their responsibilities to hold the Executive and Legislative branches responsible for meeting their Constitutional obligations and limitations.

The June 15 Federal suit, by a bipartisan group of

ten House Members, led by Dennis Kucinich, John Conyers (D-Mich.), Walter Jones and Roscoe Bartlett (R-Md.), explicitly charged the President with violating the U.S. Constitution, and sought a Court finding and sanctions against any further U.S. actions against Libya.

The Senate effort to “bring the mountain to Mohammed” by voting President Obama in compliance with the War Powers Resolution—despite his willful effort to repudiate Congressional oversight—was a reflection of the worst kind of “go along to get along” cowardice.

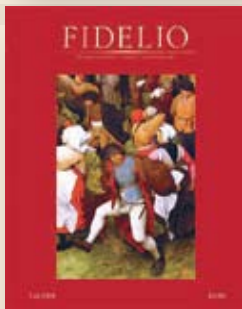
As Lyndon LaRouche pointedly asked on June 25: “Don't these people understand what is happening over the next 20 days? Once the new fiscal year begins for the states on July 1, we are facing a potential total collapse of the U.S. financial system and the real economy. There is no room to capitulate to Obama's ripping up of the Constitution. This is the road to dictatorship, and the cowardice of the Senate, in trying to dodge impeachment, puts the nation one very large step closer to that dictatorial rule.”



FIDELIO

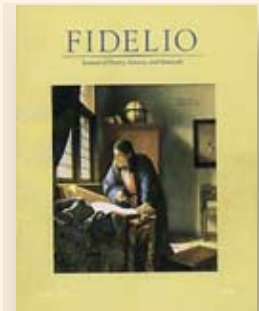
Journal of Poetry, Science, and Statecraft

From the first issue, dated Winter 1992, featuring Lyndon LaRouche on “The Science of Music: The Solution to Plato's Paradox of ‘The One and the Many,’” to the final issue of Spring/Summer 2006, a “Symposium on Edgar Allan Poe and the Spirit of the American Revolution,” *Fidelio* magazine gave voice to the Schiller Institute's intention to create a new Golden Renaissance.



The title of the magazine, is taken from Beethoven's great opera, which celebrates the struggle for political freedom over tyranny. *Fidelio* was founded at the time that LaRouche and several of his close associates were unjustly imprisoned, as was the opera's Florestan, whose character was based on the American Revolutionary hero, the French General, Marquis de Lafayette.

Each issue of *Fidelio*, throughout its 14-year lifespan, remained faithful to its initial commitment, and offered original writings by LaRouche and his associates, on matters of, what the poet Percy Byssche Shelley identified as, “profound and impassioned conceptions respecting man and nature.”



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<http://www.schillerinstitute.org/about/orderform.html>

House Debates Libya War Resolutions

Here are excerpts from the June 24 debate in the House of Representatives, on H.R. 68, to authorize the use of force in Libya; and H.R. 2278, to limit the use of funds so as to prohibit air strikes and the use of drones.

A Republic, Not an Empire

Jerrold Nadler (D-N.Y.): This morning's paper, the *New York Times*, says that this is a dangerous resolution . . . it would damage the Nation's credibility in its leadership of NATO.



Mr. Speaker, I think that the Nation's credibility—that is to say its promise to go to war if backed by the President and not by Congress—ought to be damaged. We have been sliding for 70 years into a situation where Congress has nothing to do with the decision about whether to go to war or not, and the President is becoming an absolute monarch. We must put a stop to that right now if we don't want to become an empire instead of a Republic. This country was set up to be a Republic where the basic questions of war and peace are supposed to be answered by this Congress. . . . [T]here was no imminent threat to the United States, and the Secretary of Defense said that. There was plenty of time to negotiate with the Arab League, and there was plenty of time to go to the U.N. There should have been time to have, not consultations with Congress, but the authorization from Congress. In the absence of that authorization, we have to put our foot down now and say "no." If foreign countries learn that they cannot depend on American military intervention unless Congress is aboard for the ride, good. That's a good thing.

The power of the Presidency—and I'm not talking about this President—as was said by Charles James Fox in 1780, the power of the Crown, in this case the power of the President, has increased, is increasing and

ought to be diminished. This country's power to go to war or not must reside here except in extreme and urgent emergencies. It is time to put our foot down now by passing that resolution.

Lynn Woolsey (D-Calif.): Like most Americans, I am disappointed in any argument that says we are not at war. I believe that argument shows contempt for the Constitution and for the executive's coequal branch of government—the United States Congress.

How can this not be war? If another country launched aggressive air strikes against the United States, you'd better believe we'd consider it an act of war. Does anyone remember Pearl Harbor or 9/11? We certainly considered those acts of war against our country. To say that our bombing of Libya does not rise to the level of "hostilities" flies in the face of common sense.

Mr. Speaker, our Nation can't afford a third war. The ones we are already fighting are bankrupting us morally and fiscally. This Congress must reassert our power of the purse and not fund an unauthorized war. Today, we must send a clear message that the American people and this Congress will not support perpetual war.

Violating the War Powers Act

Barbara Lee (D-Calif.): Mr. Speaker, let me just say, this debate, I believe, should have taken place at least 2 weeks prior to the war in Libya. The War Powers Act specifically forbids Armed Forces from engaging militarily in foreign lands for more than 60 days without congressional au-



thorization of the use of military force or a declaration of war. And we should really make no mistake about it: We are at war in Libya today. We have been actively fighting the Qadhafi regime in Libya since March 19, which is 97 days ago. . . . This is not about this President or any President. This is not about politics or isolationism. This is about the War Powers Act and the Constitution. It's about standing up for this body and our important role in one of the most solemn and one of the most important decisions that we make as lawmakers, and

that's the decision to declare war.

I hope that today we stand up for our Constitution. We must oppose, I believe, the resolution that gives carte blanche authorization to continue the war in Libya after the fact.

Dennis Kucinich (D-Ohio): What? We don't have enough wars going on? A war in Iraq, a war in Afghanistan? We need one more war? We have to wage war against another nation which did not attack us? We have to wage war against another nation which does not represent an actual or imminent threat to the United States?



Mr. Speaker, I have to tell you that I have been all over this country, and I haven't had a single person come up to me to tell me, "You know, Dennis, what America needs is another war." The last thing we need is to be voting to go to war. There are plenty of reasons to oppose the war in Libya:

It's unconstitutional. Article I, section 8 has given the Congress the power to declare war.

It's illegal. The War Powers resolution was passed over Presidential veto to allow the President latitude to respond when there is an imminent threat to the U.S. while retaining the constitutional duty of Congress. Even the President's top legal advisers at the Pentagon and the Department of Justice determined that the War Powers resolution applies to the war in Libya.

Dan Burton (R-Ind.): I've heard a number of people say, well, the Constitution does give the President latitude, but during the Nixon administration Congress passed the War Powers Act, and then when the President vetoed it, Congress overrode his veto, and so the War Powers Act became law. Now whether or not you believe it's constitutional, it has never been tested in the courts, and so it's the law. And the law says, as well as the Constitution, at least this is what most of the people who have looked at the Constitution believe is what it stands for, the Constitution and the War Powers Act say the President cannot do what he did without the support and approval of Congress. Now he's gotten us into the war in Libya and it is, in effect, our war. . . .

My big concern is this President, unless we send a

very strong message to him, may take us into Syria. There's humanitarian problems in Syria right now, and the reason they went into Libya, they said, was because of the humanitarian problems. He talked to the French, the English, the NATO, United Nations and the Arab League for about 2 weeks before we went into Libya, but he didn't have time to talk to the Congress who appropriates the money and authorizes this stuff. He's the Commander in Chief once we go to war, but he needs the authority from Congress to go into it, and he didn't do it.

There are a lot of wars of opportunity. The President could go into Syria. He could go into the Ivory Coast. There are a lot of places we could go to war if we choose to do it. There's humanitarian problems around the world. But unless it's a threat to the United States or an attack on the United States, the President does not have the authority to do what he did without the support and approval of Congress.

Cover for Regime Change

Dennis Kucinich (D-Ohio): We were told this is about protecting civilians. It has become a cover for regime change. And just because we can change a regime with military power doesn't mean we should do it. And using military action doesn't mean that you're going to achieve the objectives that maybe you haven't even clearly defined.

Furthermore, if our allies make a mistake, do we follow them? If our allies are going out of the war, why should we go in? Right now, you have China's foreign minister saying we hope the two parties in the conflict can attach importance to the country and the people's interest and earnestly consider the international community's relevant resolution plans, quickly cease hostilities, and resolve the Libyan crisis through political channels.

Amr Moussa, the outgoing head of the Arab League, said this 2 days ago: Now is the time to do whatever you can to reach a political solution that has to start with a genuine cease-fire under international supervision.

The President of South Africa said a few days ago that this is about regime change, political assassination, and foreign military occupation.

Michael McCaul, (R-Tex.): The Founding Fathers clearly intended for Congress to have the power to commit this Nation into armed conflict. Article I, section 8 of the Constitution states that Con-

gress shall have the power to declare war. Our first Commander in Chief, George Washington, knew that when he said, “The Constitution vests the power of declaring war in Congress; therefore, no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject and authorized such a measure.”



That is exactly what this bill is about, and President Obama, when he was a Senator, knew this when he said that, “The President does not have power under the Constitution to authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the Nation.” He went on further to say that, “No law can give Congress a backbone if it refuses to stand up as the co-equal branch the Constitution made it.”

I couldn’t agree more with him, but, unfortunately, as President, Mr. Obama appears to no longer agree with his prior interpretation of the Constitution, and in reviewing the War Powers Act, we can argue that it is unconstitutional, but that is for the Supreme Court to decide.

In applying the War Powers Act to the facts here in this case, it is clear that the President failed to comply with the requirements to get congressional approval; and when we examine the merits of the case for involvement in Libya, this administration has wholly failed to define a clear national interest, mission, or goal.

Michael Turner (D-Ohio): The President has used the United Nations’ approval of civil protection to wage an all-out war on Qadhafi, without congressional approval or American support. U.S. Admiral Locklear, in charge of the NATO operations against Libya, recently stated that ground troops would be needed to provide stability in Libya once the Qadhafi regime falls. And yet the President has not provided us any information about what a post-Qadhafi Libya will look like or what will be our involvement. He is committing us to an extended military action; and for Congress to be relevant, the voices of this body need to be heard.

A Sad Irony

Stephen Lynch (D-Mass.): Mr. Speaker, it’s a sad irony that at the same time that we’re committing our sons and daughters to an armed conflict in Libya in support of democracy and the rule of law, that we are also here at home trampling on the fundamental principles of separation of powers and the plain language of the United States Constitution, which is the supreme rule of law in our land.

I’ve heard several times now an argument that is about politics. Well, in fairness, politics is to Congress like wet is to water. We cannot avoid that.

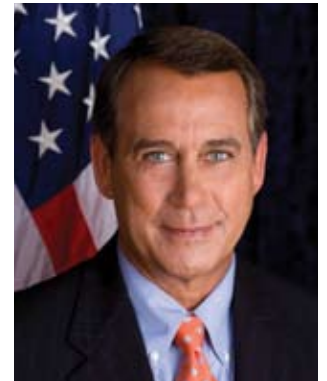
But this issue is really one of substance, and the United States Constitution clearly states that the President’s power as Commander in Chief to introduce Armed Forces into hostilities may be exercised only pursuant to three circumstances: first, a declaration of war; secondly, a specific statutory authorization; and, number three, a national emergency created by an attack on the United States or its territories. And none of those circumstances is in evidence here today.

So despite my great admiration and respect for our President, a lawful premise for this Libyan operation does not exist. . . .

Brad Sherman (D-Calif.) I know that we’ve had important resolutions from the Arab League, the U.N., and NATO. Those are not substitutes for Congress. The War Powers Act is the law of the land, and if we don’t stand up for it now, when will we? And if this President won’t obey it, what President will? . . .

Speaker of the House

John Boehner (R-Ohio): Now, whatever your opinion of the War Powers resolution may be, the fact is it is the law of the land and simply cannot be ignored. So 3 weeks ago, this House overwhelmingly passed a bipartisan resolution asking the President to explain how this mission is consistent with our national security goals, to justify continuing this operation without authorization. He responded by telling us he didn’t need Congress because there are no “hostilities” taking place in Libya. Well, we soon found out even his own lawyers don’t buy that argument.



Now, if the Commander in Chief is going to take our forces into war, he must take ownership of it. And if the

President believes that missile strikes and drone operations taking place in Libya are critical, it is his responsibility to explain to the American people and to seek authorization from this Congress. Because the President has failed to do that, because he has failed to fulfill his obligations, we are here today.

Now, make no mistake: I support the removal of the Libyan regime. I support the President's authority as Commander in Chief. But when the President chooses to challenge the powers of the Congress, I, as Speaker of this House, will defend the constitutional authority of the legislature.

Obama's Libya War: In Nixon's Footsteps

President Barack Obama's defiance of his oath to uphold the U.S. Constitution, by violating both the War Power Clause (Article I, Section 8, Clause 11), and the War Powers Resolution of 1973, has drawn a broad range of opposition in Congress, both from anti-war Democrats and conservative Republicans, and from media commentators as well. Among them, is veteran journalist George F. Will.

On June 17, Will's column, titled, "Libya and the Potemkin alliance," in the Washington Post, drew the parallels between Obama's perfidy and that of President Richard Nixon, who chose to resign, rather than face impeachment. While pulling his punches on the impeachability of Obama's crimes, Will's reference to Nixon points in that direction:

"...Recently, one-third of the House of Representatives—87 Republicans and 61 Democrats—unavailingly but honorably voted to end American involvement in Libya in 15 days. Were Barack Obama not taking a Nixonian approach to the law—the War Powers Resolution—his intervention would have ended last month. The WPR requires interventions to end after 60 days, absent congressional approval."

Will then knocks down the theory, espoused by some, that the WPR, "passed over Richard Nixon's veto," is "somehow a 'dead letter.' Their theory is that any law a president considers annoying, or Congress considers inconvenient, or some commentators consider unwise, is for those reasons nullified.

"Obama, a novel kind of commander in chief, explained in passive syntax that 'it is our military

that is being volunteered by others to carry out missions'....

"Disgust with this debacle has been darkly described as a recrudescence of 'isolationism,' as though people opposing this absurdly disproportionate and patently illegal war are akin to those who, after 1938, opposed resisting Germany and Japan. Such slovenly thinking is a byproduct of shabby behavior...."

Obama Flaunted the Law

In an earlier column, dated May 28, Will wrote that President Obama is violating the War Powers Resolution by continuing military action in Libya:

"Enacted in 1973 over President Nixon's veto, the WPR may or may not be wise. It is, however, unquestionably a law, and Barack Obama certainly is violating it." Will notes that Obama did recognize the WPR in complying with its 48-hour reporting requirement, when he notified Congress on March 21 of the U.S. military action, while promising that it would be a "limited and well-defined mission."

But then, Obama flaunted the law, when, on the 60th day, rather than terminating the action as would be required by the WPR absent Congressional approval, he sent a letter to Congress with what Will calls the "meretricious" claim that the U.S. is "no longer in the lead" and is only providing "non-kinetic support." Will comments that "NATO would not act without us, and absent U.S. assets the Libya campaign would not continue."

Sen. Richard Lugar, the ranking Republican on the Foreign Relations Committee, who Will says is "normally as placid as an Indiana meadow," was aroused, telling Obama that the WPR requirements have not been fulfilled.

Will reminds us that Obama initially promised that the war against Libya would be a matter of "days, not weeks."