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## Why Congress Must Stop Obama's Libyan Warmongering

| [More](#)<sup>[1]</sup>

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Babies have short attention spans.

Congressmen are even worse. A couple months ago legislators were outraged over the willingness of President Barack Obama to ignore the Constitution by going to war in Libya. Now the issue is all but forgotten.

The debt-limit fight offered Congress an excuse for being preoccupied. But now legislators again should confront the president's law breaking. In recent years presidents have taken on kingly airs. Frustrated with only being tasked to fight wars approved by Congress, they now claim the unilateral authority to bomb, invade and occupy other nations. They make no distinction between defensive response and aggressive action. Like monarchs of old, today's presidents attack any country they choose and fight as long as they wish.

This may be the dream of inveterate warmongers, but it is a nightmare for anyone who believes in limited, republican government. In many ways the Bush administration represented the apotheosis of this philosophy: President George W. Bush claimed the power to ignore express constitutional liberties for the (potentially unlimited) duration of a war (on terrorism) with a ubiquitous (including the homeland) battlefield. If the government wanted to arrest an American citizen in America and forever hold him incommunicado in prison, so be it.

President Obama has not made claims quite so brazen, but his behavior differs little from that of his predecessor. Indeed, when it comes to making war he has done George Bush one or even two better.

The Constitution is clear. Article 1, Sec. 8 (11) of the Constitution states that "Congress shall have the power ... to declare war." Declare does not mean to officially label a conflict started by the president. Rather, it means to start or initiate war.

The Founders made the president commander-in-chief of the military (not the country, as some people seem to think) to fight wars which Congress authorized. He also was expected to defend against sudden attack. But those who wrote the Constitution were very clear that the chief executive could not wander around the globe smiting nations hither and yon.

The reason? They had lived through the British monarchy, in which a succession of kings and queens launched a succession of unnecessary and even frivolous conflicts. As future Supreme Court Chief Justice John Jay delicately put it, dubious motives often led kings "to engage in wars not sanctified by justice or the voice and interests of his people."

At the Constitutional Convention there was virtually no support for transferring the English system to the new nation. Hence Article 1, Section 8, which James Wilson explained shifted the power to start wars to Congress: "It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is in the legislature at large." Even the great friend of executive power, Alexander Hamilton, allowed that the president's war-making authority was "in substance much inferior" to that of the British monarch, whose power "extends to the declaring of war."

None of the recent arguments made on behalf of turning America's chief executive into an elective king are persuasive: Other presidents have abused their control of the military and ignored the nation's fundamental law; Some limited, peripheral military actions may constitute an act of war rather than going to war; Legislators prefer to duck their constitutional responsibility. All true, but none justify this president violating the Constitution today.

The War Powers Resolution adds another legal layer. Given the propensity of modern presidents to violate the law, in 1973 Congress sought to create a legal framework governing military action. The president had to report to Congress when he took undertook hostilities and receive congressional authority to continue after sixty days.

President Obama initially made a show of complying with the WPR. But as his time ran out he simply declared that the law did not apply. The United States was involved in "non-kinetic support" activities, he said, not hostilities—even though Washington had initiated aggressive war against a nation which had in no way threatened America, was intent on ousting that country's legally recognized government, backed ongoing allied combat operations, and continued to use U.S. bombs, missiles, and drones to kill Libyan military personnel and destroy Libyan military materiel. Even the White House counsel disagreed with the president.

Barack Obama once grandly declared <sup>[3]</sup> that “we will again set an example for the world that the law is not subject to the whims of stubborn rulers.” But now, akin to Alice in Wonderland, we find that words apparently only mean what the president says they mean.

To their credit, congressional Republicans and Democrats alike were angered by the dishonest presidential brush-off. The administration managed to hold off efforts to defund the war, but lost support for a policy increasingly notable for its misrepresentations and mismanagement. The opposing bipartisan coalition looked likely to keep growing.

And then nothing happened.

Congress has a history of just talking about tough issues of war and peace, so often fraught with political controversy. It is easier to do nothing. If the war turns out well, Congress gives a standing ovation when the president arrives for his State of the Union speech. If the war goes badly, members hold 535 press conferences denouncing him.

As University of Chicago Law School Professor Eric Posner put it <sup>[4]</sup>: “It’s like you want someone to hold you back when you want to fight someone else. You want to look like you’re tough and you’re willing to fight, but you don’t really want to have to do it.”

The country cannot afford more legislative playacting.

First, the war threatens to draw the United States ever more deeply into an irrelevant conflict. While the administration made a show of turning responsibility over to NATO, it really is just Britain’s and France’s war. Only a third of the alliance members have provided any combat support, however minimal. Without substantial American participation NATO has been unable to do more than prevent the rebels from being defeated—prolonging the conflict and thus actually generating more civilian casualties.

Although the administration stepped back from active air operations, allied pressure caused it to maintain air and missile strikes and launch drone operations. In mid-July London requested more American support in surveillance, intelligence and aerial refueling. Moreover, there will be enormous pressure on Washington to join other NATO states in occupying and reconstructing a post-Qaddafi Libya (assuming there is a post-Qaddafi Libya).

Second, the war threatens to divert even more resources from meeting other needs. So far the war has been comparatively cheap, less than a billion dollars. However, that is another nearly billion dollars Uncle Sam does not have, money borrowed with the IOU tossed on top of the huge stack now towering over America’s future. Congress must cut programs big and small to restore federal finances to something vaguely responsible.

Third, the war threatens constitutional government. In the past, presidents have brazenly adopted dubious constitutional interpretations to justify executive war making. But past presidents have rarely made a claim so risible and transparently false as has President Obama. If he can get away with claiming that something is not what we all know it to be, then other presidents will be tempted to ignore other constitutional provisions by similarly denying the obvious.

Unfortunately, only Congress can constrain the president. A lawsuit, initiated by several legislators, is pending. But judges almost always avoid making decisions about what they call a “political question.” If the rule of law is to be vindicated, it will be on Capitol Hill.

Doing so will take courage—more than most legislators normally possess.

As Sen. Barack Obama observed <sup>[5]</sup> in 2007: “No law can force a Congress to stand up to the president. . . . No law can give Congress a backbone if it refuses to stand up as the co-equal branch the Constitution made it.”

However, members take an oath to uphold the Constitution. They need to find their backbones.

It won't be easy to stop the war, but legislators should continue pressing to end funding for ongoing military operations. Since no Americans are involved in combat, as the administration has told us, no Americans would be endangered by an immediate and complete fiscal cutoff. Other NATO governments might find themselves inconvenienced, but they should look elsewhere in the alliance for support. The United States remains involved in two wars, Afghanistan and Iraq, as well as two quasi-wars (involving regular drone strikes), Pakistan and Yemen. Other states should carry the full burden if they want this war.

Congress also should target near year's appropriations, barring the use of Pentagon funds for operations against Libya. Equally important, legislators should directly target the Obama staff, zeroing out money to pay legal officials, such as the State Department's Harold Koh, who helped develop the administration's ludicrous argument. This step would punish the president for ignoring the Constitution and the law. It also might help deter future chief executives from law breaking.

Finally, the House should threaten impeachment. This might seem like an extreme step, but columnist Glenn Greenwald noted <sup>[6]</sup> that “we've set a very low standard for our tolerance of rampant presidential law breaking.” That needs to change. Just filing an impeachment bill and holding hearings would embarrass the administration. Doing so might encourage President Obama and his successors to treat the Constitution with greater respect.

No president is above the law. Barack Obama is following in some not-so-illustrious footsteps as he conducts a war that is both foolish and illegal. Congress has a constitutional responsibility to force the president to comply with the law.

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[5] <http://dailycaller.com/2011/06/16/why-im-suing-the-obama-administration-over-libya>

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