



Never let law profs near the Oval Office

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By Gene Healy

"Surely as a former constitutional law professor, President Obama must know ..." -- that's a fairly common refrain whenever Obama commits another constitutional atrocity. I've said as much myself -- but as a recovering law student, I should know better. Constitutional law professors should be kept as far away from nuclear weapons as possible. The skill-sets they bring to the presidency just gives them the sophistry and brazenness necessary to invent new and creative ways of violating the constitutional oath of office. Obama is the fourth former con law prof to serve as president, joining William Howard Taft (University of Cincinnati Law School), Woodrow Wilson (Princeton and New York Law School), and Bill Clinton, (University of Arkansas Law School).

Taft did comparatively little damage, but the rest hardly inspire confidence that familiarity with constitutional scholarship encourages fidelity to the national charter.

Wilson was a constitutional horror show, who imposed racial segregation in federal employment and waged war on free speech, imprisoning Americans opposed to World War I. Clinton, who once lost a pile of his law students' final exams (he offered everyone a B+ in exchange) brought a cavalier, "dog ate my homework" approach to his constitutional responsibilities.

In 1999, he ignored three congressional votes denying him authority to wage war in Kosovo, and became the first president to wage an illegal war beyond the War Powers Resolution's 60-day time limit.

Last summer, as the bombs pounded Libya, the University of Chicago's Obama became the second.

"I've studied the Constitution as a student, I've taught it as a teacher," Obama proclaimed shortly after his inauguration, "we must never, ever, turn our back on its enduring principles for expedience's sake."

Not long after, in the Citizens United case, his administration argued that campaign finance laws gave the feds the power to ban books.

Still, some held out hope that this former law professor would be "our first civil libertarian president," as the New Republic's Jeffrey Rosen put it. In January 2009, Rosen argued that, as a constitutional scholar, Obama was "likely to articulate constitutional positions and then conform his presidential actions to them rather than take positions and then rely on lawyers to justify them."

Of course, that's precisely the opposite of how Obama has behaved, cherry-picking among his legal advisers until he got one to tell him his actions were legal. In Libya, Harold Koh, Obama's servile State Department legal adviser, provided the necessary cover. The War Powers Resolution, requiring the president to terminate unauthorized U.S. engagement in "hostilities" after 60 days didn't apply in the absence of "U.S. casualties or a serious threat thereof."

Sure, we were bombing Libya, but we weren't engaged in "hostilities," you see. As Orwell once put it, "you have to belong to the intelligentsia to believe things like that. No ordinary man could be such a fool."

More recently, in order to ram through several appointments, Obama summarily declared that the Senate was in recess, despite the fact that the Senate's own rules said it was in session.

It's almost enough to make you miss George W. Bush's ham-fisted "I'm the decider" approach to constitutional law. "I'll do what I want" is a less insulting legal argument than "I'm not doing what you think I'm doing."

My Cato Institute colleague Walter Olson, author of "Schools for Misrule: Legal Academia and an Over-lawyered America", explains that "legal academia rewards cleverness in coming up with strained arguments for ideologically favored (or just expedient) positions; marginalizes as eccentric thinkers who favor original understanding as a guide" to the Constitution and often reduces law to "politics by other means."

Unfortunately, that training has served Obama well.