



President Obama Is Apparently Not Imperial Enough For The GOP

President Obama goes around making war without so much as a nod to Congress, and GOP leaders respond by complaining his wars aren't extensive enough.

By Gene Healy

February 24, 2015

“Obama’s imperial presidency” has become a favorite rallying cry for the GOP. President Obama is acting “like a king,” House Speaker John Boehner (R-Ohio) rails: his “aggressive unilateralism” presents “a direct challenge to the constitutional balance of powers.” This president “believes somehow he’s become a monarch or an emperor that can basically ignore the law and do whatever he wants,” Sen. Marco Rubio (R-Fla.) fumed last summer.

Strong rhetoric—but it’s not hard to find evidence to back it up. After all, in March 2011, without so much as a by-your-leave to Congress, President Obama embarked on a seven-month bombing campaign in Libya, all the while insisting that his regime-change operation wasn’t a “war” for constitutional purposes, and didn’t even rise to the level of “hostilities” under the War Powers Resolution. Just last week, some six months and 2,000 airstrikes since he unilaterally launched our latest war in the Middle East, Obama finally got around to sending a draft “Authorization for the Use of Military Force against the Islamic State of Iraq and the Levant” up to the Hill. In our constitutional framework, we’re supposed to have the debate before the country goes to war. But since Obama’s draft AUMF came with a cover memo insisting that “existing statutes provide me with the authority I need” to wage war, he’s made it abundantly clear he thinks Congress is superfluous.

Let’s Allow Endless and Unconditional War

So how have the GOP’s erstwhile opponents of the imperial presidency greeted this latest affront to the separation of powers? By complaining that Obama hasn’t been imperial enough.

Although the Obama AUMF on its face allows the president to expand the war beyond the current theaters of battle in Iraq and Syria, it also contains a three-year time limit and a loosely

worded bar to “enduring offensive ground combat operations.” Boehner, Rubio, and many of their co-partisans find those restrictions unendurable. As they see it, any new authorization from Congress should be, like true love, endless and unconditional.

Obama’s draft authorization would “tie his hands even further,” Boehner lamented. The “limitations built into it are really quite unprecedented,” Rubio agonized on the Senate floor Wednesday. “We did some research earlier today,” Rubio continued, and “never before” has Congress authorized military action “with limitations on the time or the geography or anything of this nature.”

If Rubio’s serious about running for president, he should demand better staff work. Congress’s power to impose limitations on military targets, tactics, and timing has been recognized since the earliest days of the republic. A recent review of authorizations for the use of force throughout American history found that 60 percent imposed geographic limitations; 23 percent contained an expiration date, and “37 percent limited the kinds of military operations or forces authorized to be employed.”

President Obama Doesn’t Even Think He Needs Approval

But Rubio needn’t fret about the emperor’s alleged handcuffs. The pretend “limitations” in Obama’s AUMF aren’t designed to stick. Boehner stumbled across the reason why when he complained that “the president is asking for less authority than he has today under previous authorizations.” Right: that’s because the president believes previous authorizations already give him the power to do whatever he wants.

As long as the most important of those authorizations, the resolution Congress passed three days after 9/11, remains in effect, he can do an end-run around any restrictions in the 2015 AUMF by citing the 2001 authorization, which his legal team has warped into an enabling statute for limitless war. As former Bush administration lawyer Jack Goldsmith explains: “If the President wanted to send 100,000 troops to Iraq tomorrow—which he certainly doesn’t want to do—he has full congressional authorization to do so under the 2001 AUMF, at least as his administration interprets that law.”

“It’s probably appropriate to have the debate,” Sen. John McCain (R-Ariz.) generously allowed on “Meet the Press” Sunday, but any new limits should be off-limits: “to restrain him in our authorization...I think, frankly, is unconstitutional.” In fact, McCain argues, a new AUMF should empower the president to target “groups that are committing acts of terror, anybody who’s doing it,” and, while we’re at it, Syrian dictator Bashar al-Assad. Since Assad is also fighting ISIS, McCain’s real complaint with Obama’s draft AUMF, apparently, is that it doesn’t fully commit us to taking on all sides in a regional civil war.

McCain, too, has been known to rail against “Obama’s imperial presidency.” But war, as James Madison recognized, is “the true nurse of executive aggrandizement.” It’s hard to take the GOP’s

anti-monarchical rhetoric seriously when it's accompanied by the leadership's push for unrestrained presidential war powers. It amounts to crying "tyranny!" while dutifully empowering the king.

Gene Healy is a vice president at the Cato Institute and author of "The Cult of the Presidency: America's Dangerous Devotion to Executive Power."