

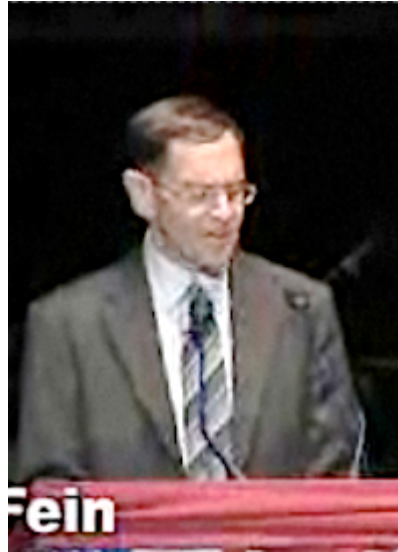


Written by [Michael Tennant](#) on April 7, 2011

A Fein Time for an Impeachment

“Barack Hussein Obama has mocked the rule of law, endangered the very existence of the Republic and the liberties of the people, and perpetrated an impeachable high crime and misdemeanor.” So charges constitutional lawyer and former Reagan Department of Justice official Bruce Fein in the 15-page article of impeachment he has drawn up in response to Obama’s unconstitutional war on Libya.

Fein has experience in such matters, having written the first article of impeachment against President Bill Clinton. He also called for the impeachment of President George W. Bush and Vice President Dick Cheney, though obviously his call went unheeded.



His case against Obama is particularly strong, concentrating on the (ahem) unimpeachable fact that the Constitution vests the power of initiating hostilities in Congress, not the President — a fact acknowledged by the Founding Fathers, previous Presidents and Congresses, the Supreme Court, and even Obama and other members of his administration (before they joined the executive branch), as Fein documents copiously. For having flouted this constitutional provision, declared “that Congress is powerless to constrain his conduct of the war,” and claimed “authority in the future to commence war unilaterally,” Fein concludes Obama is deserving of impeachment.

Fein first demonstrates that Congress’s impeachment power is intended to ensure that Presidents’ “attempts to subvert the Constitution” do not succeed. He cites the minutes of the Constitutional Convention, the Federalist Papers, and even the articles of impeachment against President Richard Nixon. He then quotes James Madison’s warnings about the dangers of war to liberty and avers: “The exclusive congressional power to commence war under ... the Constitution is the pillar of the Republic and the greatest constitutional guarantor of individual liberty, transparency, and government frugality.”

Next Fein delivers a thorough exposition on the meaning of the “declare war” clause of the Constitution. “The authors of the United States Constitution,” he writes, “manifestly intended Article I, Section VIII, Clause XI to fasten exclusive responsibility and authority on the Congress to decide whether to undertake offensive military action.” They also, he maintains, “believed that individual liberty and the Republic would be endangered by fighting too many wars, not too few,” and “understood that to aggrandize power and to leave a historical legacy, the executive in all countries chronically inflates danger manifold to justify warfare.”

Fein goes on to quote numerous sources in support of his contention. For example:

In 1793, President George Washington, who presided over the Federal Convention, wrote to South Carolina Governor William Moultrie in regards to a prospective counter-offensive against the American Indian Creek Nation: “The Constitution vests the power of declaring war with Congress, therefore no offensive expedition of importance can be undertaken until after they have



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deliberated upon the subject, and authorized such a measure.”

... In a message to Congress in December, 1805 regarding potential military action to resolve a border dispute with Spain, President Thomas Jefferson acknowledged that “Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force.” He requested Congressional authorization for offensive military action, even short of war....

In his concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 642-643 (1952), which rebuked President Harry Truman’s claim of unilateral war powers in the Korean War, Justice Robert Jackson elaborated:

Nothing in our Constitution is plainer than that declaration of a war is entrusted only to Congress. Of course, a state of war may in fact exist without a formal declaration. But no doctrine that the Court could promulgate would seem to me more sinister and alarming than that a President whose conduct of foreign affairs is so largely uncontrolled, and often even is unknown, can vastly enlarge his mastery over the internal affairs of the country by his own commitment of the Nation's armed forces to some foreign venture.

Crowning the President with unilateral authority to commence war,” Fein argues, “would empower the President to initiate war without limit, threatening the very existence of the Republic.... [T]he principle, if ever accepted by Congress, would lie around like a loaded weapon ready for use by any successor craving absolute power.”

Fein dismisses the argument that Obama’s war is not an impeachable offense since other Presidents have similarly violated the Constitution, saying that such “usurpations” of power “are not rendered constitutional by repetition.”

He also points out that United Nations Security Council resolutions are insufficient to initiate hostilities. The UN Charter itself, he explains, explicitly states that Security Council resolutions “shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.” In other words, just because the UN says it’s okay to begin bombing in five minutes, Congress must declare war in order for the United States to join the fray.

Then Fein administers what may be the *coup de grace* of the whole document: the now-infamous quotations from Obama, Vice President Joseph Biden, and Secretary of State Hillary Clinton, back when they were mere Senators, to the effect that the President may not go to war unilaterally and should be impeached if he does so. (*The New American* has [reported on these remarks](#) previously.)

Arguing that Obama has usurped Congress’s authority to declare war, Fein writes that “Obama’s military acts against Libya constitute acts of war” against a country that “posed no actual or imminent threat to the United States”; that Obama has stated he “will never hesitate to use our military ... unilaterally”; that his “humanitarian justification for war in Libya establishes a threshold that would justify his initiation of warfare in scores of nations around the globe”; and that Secretary Clinton has said the administration will [ignore](#) any congressional attempts to interfere with Obama’s war. Thus, Fein concludes,

President Obama has arrested the rule of law, and saluted a vandalizing of the Constitution that will occasion ruination of the Republic, the crippling of individual liberty, and a Leviathan government unless the President is impeached by the House of Representatives and removed from office by the Senate.



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Fein has made what would seem to be a watertight case for impeachment and removal; and the good news is that it may turn out to be more than a purely intellectual endeavor. Fein told *Politico*, "There's definitely been interest on [Capitol] Hill. There's at least two dozen who have been open to the idea that this is a serious constitutional crisis." Among those are Rep. Ron Paul (R-Texas) and Rep. Dennis Kucinich (D-Ohio), both of whom have [called](#) Obama's unilateral war-making an impeachable offense, and probably several of the cosponsors (13, including five Democrats, as of this writing) of Rep. Justin Amash's (R-Mich.) [bill](#) to end the war.

Those who are concerned about the Constitution and the rule of law should hope Congress takes up Fein's charge. As Fein himself told *Politico*, "If [Obama] can wipe out the war powers authorization, why can't he wipe out Congress's authority to spend? If we're going to be a government of laws, and not descend into empire, this is Caesar crossing the Rubicon."

Photo: Bruce Fein at Ron Paul's [Rally for the Republic](#)

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