



Obama, Clinton, and Biden Agree: War on Libya Is Unconstitutional

What a difference an election makes. The man who just singlehandedly committed the United States to war against Libya, President Barack Obama, told the *Boston Globe* in 2007:

The President does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation.

In this Obama was absolutely correct. What, then, explains his reversal? Three possibilities exist: (1) he never believed that the Constitution constrains the President from initiating war but said he did in order to get elected; (2) he believed it in 2007 but changed his mind upon taking office; or (3) he believed it in 2007 and still believes it but thinks he can get away with violating his oath of office because Congress is too timid to put the brakes on the mission now that it is under way. None of these puts the President in a particularly good light.



Obama is not the only member of his administration to have previously opposed presidential war-making. His Secretary of State, Hillary Clinton, was also questioned by the *Globe* when she was running for President and had [this to say](#):

The President has the solemn duty to defend our Nation. If the country is under truly imminent threat of attack, of course the President must take appropriate action to defend us. At the same time, the Constitution requires Congress to authorize war. I do not believe that the President can take military action — including any kind of strategic bombing — against Iran without congressional authorization.

Both Obama and Clinton trumpeted their support for a Senate resolution — Obama, in fact, introduced it — requiring the President to obtain congressional approval before initiating any military action against Iran. If Iran, a country at least suspected of trying to build nuclear weapons, wasn't enough of a threat to justify unilateral military action by the President, then surely Libya isn't.

Vice President Joe Biden, too, offered an eloquent speech on the Senate floor in 1998 in which he railed against "the 'monarchist' view of the war power — the thesis that the President holds nearly unlimited power to direct American forces into action." Biden cited several 20th-century examples of presidents claiming the authority to go to war without so much as consulting Congress, let alone getting an actual



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declaration of war, from Harry Truman's "police action" in Korea to Bill Clinton's bombing of Iraq.

Biden, then a Senator, made his speech to introduce a bill that would have greatly constrained — even more so than the probably unconstitutional and certainly toothless War Powers Act — the President's ability to order military action without obtaining congressional approval.

Said Biden:

Congress's responsibilities could not be clearer. Article I, Section 8, Clause 11 of the Constitution grants to Congress the power "to declare war, grant letters of marque and reprisal and to make rules concerning captures on land and water."

To the President, the Constitution provides in Article II, Section 2 the role of "Commander in Chief of the Army and Navy of the United States."

It may fairly be said that, with regard to many constitutional provisions, the Framers' intent was ambiguous. But on the war power, both the contemporaneous evidence and the early construction of these clauses do not leave much room for doubt.

Biden marshaled an impressive amount of early American history to support his contention, from the debate over the Constitution itself to early U.S. military campaigns to Supreme Court rulings. He even tied "letters of marque and reprisal" to today's "limited war" and "police actions," pointing out that "the Framers undoubtedly knew that reprisals, or 'imperfect war,' could lead to an all-out war," which is why they granted the power to issue such letters to the legislative rather than the executive branch. Thus, he said, "the only logical conclusion is that Framers intended to grant to Congress the power to initiate all hostilities, even limited wars."

Despite their earlier denunciations of presidential war-making, both Clinton and Biden have been fully supportive of Obama's war on Libya. Clinton early on offered ["any type of assistance"](#) to the Libyan rebels and was one of the most vocal advocates for war in the administration, earning her the [praise of Karl Rove](#). Biden, too, was [calling for intervention](#) almost from the beginning, albeit without specifically naming Libya. Neither Clinton nor Biden has publicly proffered a peep of protest about Obama's bypassing Congress; nor has either resigned in outrage over Obama's blatant disregard for the Constitution. One can only conclude that they, too, are fans of the Constitution's restrictions on the initiation of war only when they are not the ones in possession of the executive branch.

Unfortunately, that attitude is all too common in Washington, where partisanship and power trump principle 99 times out of 100. *Salon's* Glenn Greenwald [noted](#) that during the George W. Bush administration, other "leading Democrats" made many of the same arguments that Obama, Clinton, and Biden did *vis-à-vis* the President's war powers. Meanwhile, he added, "the always-principled Republicans [routinely argue](#) that Presidents do possess unilateral war-making power whenever there is a GOP President, but argue the exact opposite when there is a Democratic President."

The same goes for the chattering classes. For instance, *National Review*, which declared opponents of the unconstitutional Iraq war "unpatriotic" and whose late founder asserted that "declarations of war are out of style," ran an article on March 19 concerning the impending attack on Libya, stating: "there should be no debating that absent a hostile invasion of our country, a forcible attack against our interests, or a clear threat against us so imminent that Americans may be harmed unless prompt action is taken, the United States should not launch combat operations without congressional approval."

Pundits can be ignored; but Americans allow politicians to get away with such two-facedness at their



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own peril. These people take oaths to uphold the Constitution, and their comments when they are out of power suggest that they know full well what that document really says. They are therefore without excuse for violating it when they are in power.

When it comes to Presidents, there is a constitutional remedy for such bald-faced lawbreaking. Sadly, Congress has only seen fit to impeach Presidents for relatively trivial crimes while major constitutional violations go unpunished. (Voters have been little better, as witness the reelection of most Presidents from Franklin Roosevelt to George W. Bush.) Even more sadly, Obama, though he is making war on Libya without even the pretense of seeking congressional approval, is unlikely to be the exception to that rule.

Photo: U.S. Secretary of State Hillary Rodham Clinton — in Paris for talks with European and other leaders on the crisis in Libya that will include a meeting with Libyan opposition figures — at the Elysee Palace on March 14, 2011: AP Images

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