

Obama's Pen, Phone and Scissors

by Norman Berdichevsky (March 2014)

The recent arrogant remarks by the President that he does not have to wait for Congress to act because he has a pen and phone are nothing less than throwing down a gauntlet to both humiliate and deprecate not just the Congress, but eventually the Supreme Court and ultimately the Constitution itself through a series of unprecedented Executive Orders. These amount to nothing less than utilizing his third handy (but unmentioned) tool – a pair of scissors to eviscerate the Constitution.

One would imagine that the Democrats who have been burned in the past by arrogant Presidents unmindful of the limitations of their authority in a representative Republic and not as in a “People’s Democracy” – as the Soviet satellite states used to term themselves or “Direct Democracy” as in Switzerland with the ability to decide on referenda open air assemblies where one man = one vote. Who today would approve of what Franklin Roosevelt attempted in 1937 – to carry out a veritable putsch by packing the Supreme Court with amenable justices (all appointed for a lifetime) and increasing their number from 9 to 15? Even worse, of course, was his executive order with the stroke of a pen to deprive Japanese-Americans of their fundamental rights, property and liberty through internment in 1942-45.

President Obama is clearly on the same path and must be stopped. Who attempted to stop Roosevelt in 1937? The “Judiciary Reorganization Bill of 1937” proposed by Roosevelt was based on his assumption that following his massive electoral victory in 1936, he could ride rough shod over public opinion and a compliant Congress. The bill would have allowed him to appoint an additional member to the Supreme Court for every sitting justice over the age of 70, which would have resulted in a total of six new justices at the time the bill was introduced. He was confident that because the Constitution does not limit the size of the Supreme Court, the proposed legislation could ignore the opposition of the sitting Congress and Supreme Court because he claimed he was acting “On behalf of the people.”

Only a short time before his bill failed to be enacted, the then sitting nine justices pronounced key provisions of his “New Deal” such as the National Industrial Recovery Act as unconstitutional. Roosevelt had argued that the court was unduly infringing on prerogatives of the legislature and thus he and the Congress were being hampered in providing relief for the

people through his New Deal programs by the aged and conservative, even reactionary, members of the court. This failed to sway the public, who perceived it as an effort by the President to pack the court and thus ensure it would do his bidding, a power-grab by the executive.

On July 22, 1937, the full Senate voted to send the bill back to the Senate Judiciary Committee where many of the provisions, including providing for additional justices to the Supreme Court, were eventually stripped. Finally, on August 26, 1937, the Senate passed an amended version of the Judiciary Reorganization Bill which did not include a provision to increase the number of Supreme Court justices. In spite of Roosevelt's popularity and huge Democrat majorities in both houses, and appeals to the public, he could not act as a benevolent autocrat.

In spite of this experience, he later acted through an executive order which was a naked deprivation of the basic civil rights of American citizens even though backed by public opinion and the Supreme Court.

On February 19, 1942, President Franklin D. Roosevelt issued Executive Order 9066, which allowed local military commanders to designate "military areas" as "exclusion zones," from which "any or all persons may be excluded." This power was used to declare that all people of Japanese ancestry were excluded from the entire Pacific coast, including all of California and much of Oregon, Washington and Arizona. The Supreme Court upheld the constitutionality of the exclusion orders. The United States Census Bureau assisted the internment efforts by providing confidential neighborhood information on Japanese Americans. Among high ranking officials in the FDR administration and cabinet, the only one to object to the order was FBI director J. Edgar Hoover.

In 1980, President Jimmy Carter appointed the Commission on Wartime Relocation and Internment of Civilians (CWRIC) to investigate the relocation camps. The commission's report, found little evidence of Japanese disloyalty at the time and recommended the government pay reparations to the survivors. In 1988, President Ronald Reagan signed into law legislation that apologized for the internment on behalf of the U.S. government citing that the government actions were based on "race prejudice, war hysteria, and a failure of political leadership." The U.S. government eventually disbursed more than \$1.6 billion in reparations to Japanese Americans who had been interned and their heirs.

These two examples of Roosevelt, undoubtedly enjoying unmatched popularity during the Depression years, just after his election victory in 1936 and following Pearl Harbor, puts into relief the bankrupt and dangerous claims of Obama to act alone with his pen and

telephone.

Even in the case of the internment of Japanese-Americans, the fact that the president had no need to consult with Congress but relied on general war hysteria overlooked the many Japanese business and civic associations that had forged links with congressmen and senators and could have impeded the rush to judgment by the president. They knew their constituents better than the President or the military authorities in Hawaii who did not ask for internment for the Japanese-Americans living there. Skipping Congress or the Supreme Court and failing to win their approval makes any executive order less likely to stand the test of time.

Obama's *curriculum vita* states that that he taught constitutional law for ten years, but his *modus operandi* is that of the ruler of a Banana Republic. It is not the number of executive orders but the type that recalls FDR's two huge blunders. His claim that he acts with his pen, phone and scissors because Congress is passive, turns everything on its head. He continues to use executive orders and actions to alter his own legislation and clearly the reason is to cover his own poor judgment and errors. The Affordable Health Care Act is the prime example. Conversely, he refuses to issue executive orders where they are urgently called for as in the case of issuing final approval for the Keystone Pipeline.

Moreover, he has used executive power to prevent the Congress from acting, as in the so called "Dream Act by fiat" in 2012 whereby he forestalled Sen. Marco Rubio (R-FL), who was preparing his own version.

His decision to use force in Libya had no congressional authority whatsoever, but he acted to prevent non-existent atrocities whereas he refused to move in any significant way on Syria where close to 200,000 people have been killed, at least 40% innocent civilians on both sides and the country faces imminent starvation. Yet his hands are "tied" and he cites his reasons for not acting as a lack of both constitutional authority and congressional support. He even went to congress to get approval for a strike against the Bashar Assad regime but withdrew the threat when it appeared that he would not get it. These about turns have confused our allies and enemies alike. Meaningless bluster about crossing "red lines" and threatening "consequences" have all been revealed as hollow and diminished his standing as Commander-in-Chief.

The President's behavior should make all Americans willing to go back to the Constitution and understand its nature as a carefully crafted federal system with a division of powers and the methods approved for amending the constitution. The founders quite correctly made the system cumbersome and slow-moving to avoid the greatest threat to our freedom, liberty and rights by

putting checks, balances and brakes in the way of the “popular will” that Obama claims he is eager to fulfill. (see [“The Left is Seldom Right](#) for New English Review Press.

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