Putting the President in His Place
By Lisa L. Miller

Congress can scale back the imperial presidency by acting now on Iraq and signing statements.

July 4th 2007 may turn out to be an Independence Day second only to the original one of 1776 in its importance to the nation's history. If the first week back from its holiday recess is any indicator, Congress may now be firmly on the path of reclaiming its constitutional responsibilities – and thus asserting its independence from the imperial pretensions of the current "King George" – to shape policy and programs on defense and foreign affairs.

The Senate finally started floor debate on the 2008 Defense Authorization legislation (H.R. 1585), the bill that tells the Pentagon the categories and programs Congress intends to fund for the coming fiscal year.

Because the Senate rules allow members to offer amendments from the floor (unless the majority and minority leaders reach an agreement limiting the scope or number of amendments), the number of amendments to be offered and debated is unclear. At last count, as many as 40 amendments have either been filed with the clerk or are being considered by members. Most concern the Iraq war. Of those, most would limit troop deployments or require the president to initiate the withdrawal of U.S. troops from Iraq. Where proposed amendments overlap, some consolidation can be expected and will be necessary if the Senate is to wade through the stack of proposals before it breaks for the August recess.

Over in the House of Representatives, the House Armed Services Committee Chairman Ike Skelton (D-MO) introduced H.R. 2956, the "Responsible Redeployment from Iraq Act." Provisions of this proposed law mirror some of the proposed amendments to the Senate's Defense Authorization bill. Specifically, the Skelton bill would require the secretary of defense to begin withdrawing troops from Iraq 120 days after the bill becomes law and to complete the reduction "to a limited presence" by April 1, 2008. The bill also requires the president to develop and send to Congress a new strategy that integrates diplomatic, political, economic, and military aspects of a comprehensive plan charting the way forward in restoring Iraqi sovereignty ands regional stability.

Whether any of the Senate amendments are included in the Defense Authorization Bill remains to be seen. Similar uncertainty surrounds the Skelton legislation's chances of becoming law even though the House approved it by a vote of 223-201. But for the first time since President Bush sent U.S. troops into Iraq, both houses of Congress are dealing with legislation to set deadlines for initiating troop withdrawals and, in some instances, deadlines for withdrawing all combat troops not needed for force protection. The president, however, has promised to veto any legislation that establishes deadlines for withdrawal, and congressional opponents don't have enough votes to override the president.

The majority of Americans want to bring home all the troops at some point, and without doubt the public made that clear to members over the Independence Day recess.

But in a broader sense, until the Congress moves to reclaim its status as a co-equal branch of government, Bush will continue to ignore the people and the Congress not only on the Iraq War but on other policies where he holds contrary views.

Signing Statements

This reality gives added importance to one proposed amendment to the Defense Authorization bill that does not address the Iraq war directly. Amendment 2021, co-sponsored by Senators Arlen Specter (R-PA) and John Kerry (D-MA), takes on the president's extensive use of "signing statements" to subvert the will of the American people, as expressed through their representatives in Washington.

Presidents since James Madison have appended these notices to legislation when they intend to interpret a provision in a statute in a manner different from congressional intent. But, as the non-partisan Government Accountability Office reported in mid-June 2007, Bush has made signing statements a common practice – virtually rewriting specific features of the legislation to conform to his interpretation of what Congress intended. In 11 of the 12 appropriations bills in fiscal year 2006, Bush issued signing statements affecting 160 provisions of law. He justified many of these exceptions by labeling the original provisions as unconstitutional.

The last time I checked the constitution, the power to decide whether a provision of law is unconstitutional belongs to the courts, not the executive.

In fact, George Bush's entire term of office has been one unending attempt to make an end-run around Congress' legislative power as provided for in Article I of the constitution. The Founding Fathers provided in Article II of the constitution the president's remedy. Under Article II, should the president disagree with provisions of legislation passed by Congress, he can veto the legislation, thereby challenging Congress to muster a two-thirds super-majority in each House to override the president's objections.

Underlying the entire thrust of the Bush maneuver is the highly questionably theory, often proclaimed by the president to be inherent in the constitution, of the unitary executive. The White House has argued that the Founders regarded the president's viewpoint on what a law means to be of equal weight to the viewpoint of Congress since legislation requires the president's signature to become law. The president makes known his interpretation via the presidential signing statement in which he singles out those provisions he will not enforce.

In effect, Bush is claiming a non-existent power: the line-item veto. Congress has never passed a statute giving the president this power, and the courts have rejected a related concept that Richard Nixon tried: sequestering money voted by Congress for programs that Nixon opposed but were included in "must-have" legislation the president signed.

What the Specter-Kerry amendment proposes is straightforward: no judicial proceeding in the United States shall take notice of or in any way rely on presidential signing statements as the source of governmental authority in any case that comes before the court.

If included in the final bill sent to the White House, will this have any real effect? Recent history is not encouraging.

In 2006, Senator Specter proposed legislation that, among other provisions, would have given Congress "standing" to test the constitutionality of signing statements before the Supreme Court. The bill died in committee. Also in 2006, an amendment by Senator John McCain (R-AZ) to the Defense Department Emergency Supplemental spending bill barred the use of torture by military interrogators. The amendment stated that only another law passed by Congress could repeal, supersede, or modify the McCain amendment. On signing the bill, Bush blithely ignored the McCain proviso, stating he would interpret the law so as to properly "supervise the unitary executive branch" as commander in chief and "consistent with the constitutional limitations on the judicial power."

Thus, the Specter-Kerry provision in the 2008 Defense Authorization bill is critical for reestablishing the separation of powers set out in the U.S. constitution and making crystal clear that Congress will not stand for an imperial presidency. Only one letter separates a palace from a place. The Founding Fathers took the first "a" from King George III's "palace" and put him in his "place" more than 225 years ago. By voting to bring home the troops and restricting the impact of signing statements, Congress can help put King George W. Bush in his place as well.

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