

Executive Privilege or Power Grab?

Don't Give up Rove

By Patrick J. Buchanan

If the Senate Judiciary Committee issues a subpoena for Karl Rove to testify to his role in the firing of the eight U.S. attorneys, President Bush should defy the subpoena, accept the contempt citation, and fight it all the way to the Supreme Court.

Then he should deputize Vice President Cheney to deliver the message to his old friend, Chairman Pat Leahy.

Not in memory has there been more of a nothing-burger of a scandal than the sacking of the martyrs of Alberto Gonzales. As my former White House colleague Jim Warner writes, this is a “contrived controversy ... since the Supreme Court has ruled that, with limited exceptions, Congress has no voice in the dismissal of federal officers.”

U.S. attorneys serve at the pleasure of the president. Bush can fire them, retain them, or remove some and retain others. The Supreme Court has upheld that right and denied Congress any role in the presidential hiring and firing of political appointees. Writes Warner:

In 1926, the Supreme Court held that the requirement for the Senate approval of a dismissal was unconstitutional. Chief Justice William Howard Taft, writing for the majority, stated that in order for the president to fulfill his constitutional duty, he must be able to discharge federal workers whose performance in office was not in accordance with his desire and that this responsibility could not be shared with Congress.

Why then is Congress mucking around in what is none of Congress' business? President Bush should tell the Senate Judiciary Committee to butt out. Indeed, he has a duty to do so. For he is today custodian of an office that is the subject of assault by a savagely partisan and hostile Congress.

This is not about the competence of Alberto Gonzales or his coterie at Justice or any White House role in the ouster of the eight. This is about preserving and protecting the integrity of the presidency of the United States. It is about the right of every president to receive the candid counsel of his most trusted advisers.

If White House assistants as close to a president as Karl Rove is to Bush can be ordered before Congress to

Continued on Page 10

Sic Semper Tyrannis

By Llewellyn H. Rockwell Jr.

Maybe the authors of the *Federalist Papers* were liars. Maybe they were just engaged in political propaganda in order to shove through the Constitution. In secret, perhaps, they were plotting a leviathan state with a president who can do all that the Bush administration claims he can, which pretty much amounts to whatever Bush wants to do.

If that was the case, they knew better than to advertise it. The Constitution would never have passed. Fear of a powerful president was one of the main reasons that people were fearful of abandoning the Articles of Confederation, which had no executive to speak of.

Recall that the founders had long tangled with the king in England. The entire Declaration of Independence was a personal attack on him and his policies. These were the days of “personal states” in the sense that a government was still thought to be the private property of a monarch. The bad aspect of this system was that the king could become a tyrant. The good aspect was that people knew whom to target to end the tyranny or, in the case of the founders, whom to denounce in the course of a political separation.

As an alternative to the personal executive state, the founders (perhaps naïvely) believed that they could create a Roman-style republic with a twist. There would be a head of state, but he would be controlled by a legislature. In fact, controlling the president would be the main job of the legislature. The founders went this one better by refusing to invest much power in the central government. Instead, the powers were decentralized and belonged to the member states.

The anti-federalists were skeptical. How can you create a presidency and not expect it to become corrupt? Alexander Hamilton was absolutely reassuring in *Federalist* 69. He said that the president bears no resemblance at all “to the Grand Seigneur, to the khan of Tartary, to the Man of the Seven Mountains, or to the governor of New York.” He concedes that the president has some resemblance to the king of Britain, but there are important and critical differences. He would only be president for four years, which is too little time “for establishing a dangerous influence in a single State.”

He raises a point that was very much central to the minds of that generation. A king cannot be removed from office through peaceful means. In contrast, the president

Continued on Page 11

Buchanan

Continued from Page 9

be interrogated publicly on the inner workings of the White House, or what he may have told the president on controversial issues, the presidency will be irretrievably damaged. Whatever conservatives may think of Bush or Rove, they ought to be as protective of the rights and powers of a president as they are of those of Congress and the Supreme Court.

And what is the matter with so many journalists that they cannot see the principle at stake? Is their contempt for Bush so great they cannot see a need for executive privilege? Indeed, the hypocrisy on the part of many in the press is so manifest as to make them look almost absurdly partisan.

We just passed through a criminal investigation by U.S. Attorney Patrick Fitzgerald of the alleged outing of a CIA covert agent, an investigation the press demanded. Yet journalists howled when Judith Miller of the *New York Times* and Matt Cooper of *Time* were forced to testify to a federal grand jury in that criminal investigation. To defend reporter's privilege, Miller spent months in jail rather than reveal what a single White House aide had told her.

Can journalists credibly argue for an absolute shield law that protects their right never to have to reveal—even to a U.S. grand jury investigating potential crimes against national security—what Karl Rove told them, but President Bush has no right to protect what Rove told him from a partisan congressional committee?

Congress, too, is being massively hypocritical. When \$90,000 was discovered in Congressman William Jefferson's freezer, the Justice Department went before a federal judge for a subpoena for the FBI to enter Jefferson's office. FBI agents removed files related to a corruption investigation.

Members of Congress were outraged at this executive-branch intrusion in their sacrosanct domain. Former Speakers Newt Gingrich and Tom Foley joined to file amicus briefs on Jefferson's behalf, asserting an executive-branch violation of the separation of powers. No matter that Jefferson was under criminal investigation, no matter that the subpoena was validly issued by a U.S. judge, Capitol Hill was said to be a sanctuary into which law-enforcement agents of the executive branch had no right to intrude.

Journalists make the point that Nixon aides, this writer among them, had to testify under oath in televised hearings before the Senate Watergate Committee, that Nixon was ordered by the Supreme Court to turn over the tapes of his most confidential Oval Office conversations. But those tapes were ordered to be turned over to an independent prosecutor, whose office had been set up to investigate the White House and prosecute former White House aides. The executive branch was investigating itself. As for the Watergate Committee, it was a special committee with which President Nixon, after White House aides involved in the scandal had been removed, had agreed to co-operate. The same was true of President Reagan in the Iran-Contra affair.

Of the eight U.S. attorneys, what do we know? That they were fired with the approval of the president at whose pleasure they served; that there is no hard evidence any was fired to abort a criminal investigation; that some were incompetent and others seemed to have their own agendas or were not dealing as resolutely as Justice was demanding with such matters as illegal immigration.

If the Senate Judiciary Committee feels illegitimate pressure was put on U.S. Attorney David Iglesias by that phone call from Sen. Pete Domenici asking about indictments in a corruption scandal, why have they not called Domenici to testify rather than demanding the appearance of Karl Rove? The answer suggests itself. As Warner wrote, this is a "contrived controversy," born of "imaginary indignation."

We also know that Justice Department officials did not tell Congress the same story about why they did what they did. But what exactly is the Senate's responsibility if there are conflicts in recollection among Justice officials in doing what they had every right to do: fire the eight? These hearings are thus a perjury trap, designed to elicit conflicts of testimony so senators can howl for appointment of a special prosecutor because someone has lied to them.

Congress has the right to command the public testimony of executive-branch officers in the Cabinet departments. Congress has no more right to command the public testimony of a president's closest aides than it has to the public testimony of Supreme Court clerks as to what they told the Chief Justice or what the Justices told each other before handing down a decision.

If Congress presses ahead with these subpoenas, the president should use every weapon in his arsenal to repel this act of aggression by a rogue Congress against the Office of the President of the United States. ■

Rockwell

Continued from Page 9

“would be liable to be impeached, tried, and, upon conviction of treason, bribery, or other high crimes or misdemeanors, removed from office; and would afterwards be liable to prosecution and punishment in the ordinary course of law.”

Yes, said Hamilton, the president is commander in chief of the military. But this power is only “occasional”: when the legislature has authorized the military for actual service. He has no power to declare war or to raise and regulate armies. All these powers “appertain to the legislature.” Finally, he reminds us, if any powers are abused—such as the power of pardon—the president can be impeached immediately.

One gathers from these passages a vision of the president as a temporary manager, doing only what the legislature approves, always under the relentless threat of impeachment. Presidents would come and go, and they would be in fear of the legislature. One misstep and they could be tossed out. Oh, and by the way, the president can’t get rid of the legislature except in one narrow case: he can adjourn them when they otherwise can’t agree on how or when to leave.

What about his powers? He can negotiate treaties and commercial agreements. He can welcome ambassadors. Everything else can only be done with the advice and consent of the Senate.

Was Hamilton a liar? He is usually presented as the advocate of presidential supremacy and certainly he went much farther than the Jeffersonians in his view of government. He was an extremist by any standard. He favored leviathan by comparison to the anti-federalists. And yet, from his own writings, the president in his vision of the Constitution is nothing more than a hired manager with few powers, and those not trivial are subject to the legislature. If he abuses power, he goes to the gallows in the republican fashion: he is impeached.

How does this contrast with the view of the Bush administration? It is opposite in every respect. Consider the claim of John Yoo, author of *The Powers of War and Peace*, the bible of the Bush administration’s claim of totalitarian powers in war, and the reputed author of most of the Bush administration’s torture policies. Yoo’s book is a twisted mess, an attempt to justify reading the founding period in an opposite way from its historical reality. It’s like

arguing that King Lear is a comedy, that Beethoven was second rate, or that the Bible endorses Satanism. There is always someone around to make any crazy claim you want, and if you are the ruling party, intellectuals will crawl out of the woodwork to say what you want them to say.

In any case, this book by Yoo dismisses the whole of what Hamilton says in Federalist 69 as “rhetorical excess.” And an article in the *Boston Globe* quotes him as saying that “Fed 69 should not be read for more than what it is worth.” Why? Because all presidents since FDR have used the imaginary war power to do their dirty tricks.

This is an interesting argument. It says that because some tyrants have violated the Constitution, all presidents should presume the right to be tyrants in the manner in which the Constitution’s framers tried to guard against. Now if some intellectuals set out to say that the Constitution is really just a myth, that our past doesn’t matter, that the founders’ intentions are irrelevant, that the rule of law is and should be a dead letter, that would be one thing. We would be back to the fundamental debate of liberty versus despotism.

Instead, keep in mind that the people arguing for executive dictatorship fashion themselves as conservatives. Contrast this with the genuine conservatism of Robert Taft, who saw the postwar period as a time to set matters right and return to first principles. He attacked Truman for his Cold War forays and stated clearly that Congress alone has authority to declare war and manage foreign policy. FDR’s attitude toward his power, Taft wrote, was inconsistent with our heritage.

To return to my original question: what if the authors of the *Federalist Papers* were liars? This is not as crazy a theory as it might sound. Patrick Henry believed that they were, which is why he opposed the Constitution to begin with. It was too much of a risk, he said, to create any sort of president: “If your American chief be a man of ambition and abilities, how easy is it for him to render himself absolute!”

Patrick Henry lost the debate because enough people believed that Hamilton was sincere in his promises and that the president would be restrained. So let us be clear about what the advocates of executive rule are really saying. They are saying things that if they had been said to that founding generation of Americans would have prevented the Constitution from ever being passed. But it did pass. So until we can restore the Articles, let’s live up to the Constitution, and stop the dissembling, especially in the name of “conservatism.” ■

Llewellyn H. Rockwell Jr., is founder of the Ludwig von Mises Institute and editor of LewRockwell.com.

Algeria, the Model

Fifty years ago, another Western power fought “Islamofascism”—then walked away.

By **Scott McConnell**

WHEN CONTEMPLATING IRAQ, Americans look into a murky crystal ball. History naturally presents itself as a tool to clarify the choices and possibilities that lie before us. But what history? Before the invasion, neoconservatives soaked the capital in the rhetoric of Winston Churchill and the “lessons” of the 1930s. Later, after Saddam was found to have no weapons of mass destruction, they sought to rebrand the Iraq War as a part of the long struggle against totalitarian “Islamofascism” and thus a successor to the Cold War. For many Americans, the natural comparison is the Vietnam War, which ended with evacuation choppers on the Saigon embassy’s roof and several more years of bloodshed in Indochina.

The French war in Algeria, never well known in the United States, has its own claims to stake. Before the Iraq War commenced, some Pentagon special operations officers attended a screening of Gillo Pontecorvo’s classic 1966 docudrama, “The Battle of Algiers.” More recently, reporters were told that George W. Bush was reading Alistair Horne’s exhaustive *A Savage War of Peace*—a book that, Horne stated in the preface to the recent paperback edition, was Ariel Sharon’s favorite bedtime reading. (Israeli dove Amos Elon remarked that Sharon must have completely misunderstood the work.)

What lessons might Americans draw from the Algerian war? They are not obvious. The brutal conflict, which gave rise to an extraordinary memoir literature in French, impinged on France’s national life far more than Iraq has yet

touched America. But some common features are clear. The Algerian war was more or less part of our own historic era, influenced by international air travel and mass communications. A Western democracy was facing off against Arab Muslims; terrorism against civilians—first employed by the Arab guerrillas and later by the French far Right—was a central aspect of the war; and the use of torture to root out the terror networks produced a moral upheaval in France. Indeed, the war very nearly cost France its democracy.

In the end, it required the extraordinary political leadership of Charles de Gaulle, who turned against some of his most devoted supporters, to extricate France from the mess and move the country forward. Losing the war proved far more painful for the Algerians who had aligned themselves with France than for France itself. If one is looking for an example of a comparatively rich and technologically superior Christian country trying to dominate an Arab land against substantial local and international opposition, Algeria surely fits the template.

Still, different people will draw different conclusions about the conflict: *The Weekly Standard’s* Irwin Steltzer reports (with great satisfaction) that the lesson George W. Bush has apparently imbibed from Alistair Horne’s book is that France didn’t stay long enough!

Of course the parallel doesn’t fit perfectly. France was tied to Algeria through the presence of one million European settlers, who saw themselves as French, though they came from

throughout the northern tier of the Mediterranean. Prosperous landowners, small industrialists, holders of lower middle-class city jobs, shopkeepers, (a few) manual laborers, the *pied noirs* were united by attachment to a privileged status French control over Algeria gave them. They had a powerful lobby in Paris, through which they exercised great influence on the appointed colonial government. A local legislature—originally created as a liberalizing reform—was designed with separate wings, one for Europeans and one for Muslims, so that any Algerian democratic initiative would be stillborn. The *pied noirs* secured for themselves the colony’s best land and had access to the best jobs. France devoted more resources to schooling the children of the one million *pied noirs* than it did to those of nine million Muslims. The two communities had little social contact and virtually no intermarriage.

The accelerating disparity between the groups’ birthrates reached into every aspect of the colony’s social system. At the time of the French conquest in 1830, the Muslim population was less than two million; it was nine or ten million at the outbreak of the insurrection—and growing fast. Any program of real integration between the two communities—one that gave every Algerian an equal right to a European to vote for representatives in Paris—would have led to Muslims becoming a powerful voting bloc in France proper. This was a fact few partisans of French Algeria were willing to face.