

9 June 2007

**Political Background for
The Constitution and Iraq: "Advice and Consent"**

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I. Digression on the "Power of the Purse": There are three known cases of a legislature actually exercising the "power of the purse" to force major changes in national policy, two of which involved the attempt to end a war:

A. 1995: Newt Gingrich's shut down of Government over the Republican "Contract with America."

B. 1973: "None of the funds herein appropriated under this Act [Defense Appropriation] may be expended to support directly or indirectly combat activities in or over Cambodia, Laos, North Vietnam and South Vietnam or off the shores of Cambodia, Laos, North Vietnam and South Vietnam by United States forces, and after August 15, 1973, no other funds heretofore appropriated under and Act may be expended for such purposes" [Approved July 1, 1973] (Pub. L. No. 93-50, Stat. 129).
Crucially though, by 1973, all American combat troops were out of Indochina.

C. 1640: Both the Short (1640) and the Long (1640-53) Parliaments refused new taxes for Charles I's Scottish Wars. This led to the English Civil War and the beheading of Charles I in 1649.

Conclusion, cutting funding for combat activities in Iraq will be both possible and successful after the troops leave, but not before.

II. Strategic Situation: Since January 2007:

A. President Bush has been fighting his position from the solid constitutional grounds of:

1. his veto power and
2. his powers as commander-in-chief.

B. The Congress has been fighting its position from the shifting sands of:

1. public opinion and
2. a hoped for exercise of the "power of the purse."

Conclusion, until the Congress begins fighting its position from solid constitutional grounds, President Bush will continue to frustrates its every initiative. (Cartoons: "Bully of the Beach," "Doonesbury," "Sectarian Violence")

III. Interest Analysis:

A. The National Interest: All agree that the US military should remain in Iraq **if the conditions are right.**

1. It is NOT in the interest of the nation for the Congress and the President to remain at loggerheads over which "conditions" are the "right" conditions.
2. It is in the interest of the nation for the Congress and the President to cooperate in determining which "conditions" are "right" going forward to 20 January 2009 and beyond.
3. What constitutional procedures are available to foster such cooperation?

B. The Interests of President Bush Are:

1. To shape policy towards Iraq post-2008.
2. To increase and solidify congressional support for his policy.

C. The Interests of the Republican Members of the Congress Are:

1. To support President Bush and his policies towards Iraq.
2. To increase and solidify public support for both themselves and President Bush over his policies towards Iraq.

D. The Interests of the Democratic Members of the Congress:

1. To create a constitutionally sanctioned process whereby the Congress can determine, in law, whether a proposed set of "conditions" is "right" or not "right."
 - a. To effect such a constitutionally sanctioned process, the process must arise out of a mutual agreement among:
 - i. the Government of Iraq,
 - ii. President Bush, and
 - iii. the Congress, representing the American people.
 - b. The Constitution fosters mutual agreement among the President, the Congress, and foreign powers by mandating that:
 - i. only the President can negotiate treaties with foreign powers; and
 - ii. only the Senate by 2/3 vote can consent to the ratification of the treaties negotiated by the President.

IV. The Constitutional Procedures:

A. Abandoning the "Power of the Purse":

1. A hoped for exercise of the "power of the purse" will satisfy none of the interests of either President Bush, the Congress, or the nation. The President and the Congress will remain at loggerheads; cooperation and mutual agreement will not be achieved.
2. Because no evidence exists that the "power of the purse" has ever been successful in such cases, it contributes nothing to resolving the problem.

B. Passing a Joint Resolution authorizing President Bush to negotiate a Treaty of Peace and a Bilateral Treaty of Alliance with the Government of Iraq:

1. Meeting President Bush's Interests:

a. As mandated by the Constitution, only the President can treat with foreign powers. The Congress should therefore authorize by joint resolution President Bush to negotiate a Treaty of Peace and a Bilateral Treaty of Alliance with the new, legitimate Government of Iraq. Upon completion of the negotiations:

i. if 2/3 of the Senate voted to "**consent**" to the treaties, President Bush would achieve his primary interests:

+ to shape policy towards Iraq post-2008; his policy now being fixed in law by the treaties, and

+ to increase and solidify congressional support for his policy by obtaining 2/3 Senate support for his Iraq policy going forward beyond 2009;

ii. if 2/3 of the Senate **refused to "consent"** to the treaties, President Bush would NOT achieve his primary interests.

iii. But, critically, a Senate refusal would remove any legal basis for a continued US military occupation of Iraq.

2. Meeting the Interests of the Republican Members of Congress:

a. Authorization by joint resolution for President Bush to negotiate a Treaty of Peace and a Bilateral Treaty of Alliance with the new, legitimate Government of Iraq, allows the Republican members of the Congress:

i. to support President Bush and his policies towards Iraq by offering him the opportunity to fix his policies in law, and

ii. to increase and solidify public support for both themselves and President Bush towards his policies towards Iraq, should 2/3 of the Senate "consent" to the treaties.

3. Meeting the Interests of the Democratic Members of Congress:

a. As mandated by the Constitution, only the Senate by a 2/3 vote can consent to the ratification of the treaties negotiated by the President with foreign governments.

b. This power to give "advice and consent" creates a constitutionally sanctioned process whereby the Congress can either affirm or repudiate President Bush's policy towards Iraq, with the force of law.

i. If both 2/3 of the Senate and the Iraqi Parliament **consent**, then both President Bush and the Republican members of the Congress will have had their respective interests satisfied.

ii. If either 2/3 of the Senate or the Iraqi Parliament **refuse to consent**, then a solid constitutional process will have determined that no legal basis exists for the continued American military occupation of Iraq.

c. In either case, the interest of the Congress--both the Republican and Democratic members--will have been served because:

i. it is NOT in the interest of the members of Congress for the Congress and the President to remain at loggerheads over Iraq;

ii. it is in the interest of the members of Congress for the Congress and the President to cooperate in developing policy towards Iraq going forward to 20 January 2009 and beyond.

4. Meeting the National Interests:

a. A congressional authorization by joint resolution for President Bush to negotiate a Treaty of Peace and a Bilateral Treaty of Alliance with the new, legitimate Government of Iraq is a constitutional procedure that fosters cooperation among the Government of Iraq, the President, and the Congress?

b. Further, such an authorization is a constitutionally sound procedure by which the Congress, and not President Bush, determines the "rightness" of the "conditions" for a continued US military occupation of Iraq because:

i. the Constitution mandates that the President shall negotiate those "conditions" in accordance with his powers to conduct foreign affairs;

ii. but the Constitution also mandates that the President shall NOT judge the "rightness" of the "conditions." That is constitutional responsibility of 2/3 of the Senate.

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