

**THE BLOG**

Constitutional Smackdown

By Marty Kaplan

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When someone like Tim Russert asks someone like Sen. Patrick Leahy (D-Vt.), as he did Sunday on NBC's *Meet the Press*, whether a conflict between Congress and the Bush White House will lead to a constitutional crisis, I get the sense that the news industry has a rooting interest in the answer being "yes." I do too, but for different reasons.

News has become a profit center for the media sector, and a constitutional crisis — in this case, over the administration's refusal to honor congressional subpoenas concerning the fired U.S. attorneys — would be a ratings winner. Like the war in Iraq — but unlike, say, the genocide in Darfur or the commuting of I. Lewis "Scooter" Libby's sentence (which was within the president's power) — it would get its own scary theme music, its own creepy custom graphics, its own special squadron of dueling partisans and paid analysts.

An endangered Constitution would warrant nonstop damsel-in-distress attention, like the legion of missing white women or the celeb rehabaholics deemed editorially worthy of blanket coverage. It could be "Perils of Pauline" for fans of the founders.

Will our republic survive this standoff between the executive and legislative branches? Will brazen stonewalling or overreaching oversight provoke civil unrest? Will this confrontation risk despotism and derail democracy? Stay tuned, folks.

There is, of course, plenty of precedent for this kind of coverage. Watergate provides the template. When, after President Reagan was shot in 1981, Secretary of State Alexander Haig told the White House press corps, "I'm in control here," that was catnip to the constitutional-crisis caucus.

The disputed Florida ballots in the 2000 presidential election were also made in heaven for this kind of media framing, though Republicans proved far more adept than Democrats in turning it their way. When John Bolton burst into a Tallahassee library where a hand count of ballots was underway and declared, "I'm with the Bush-Cheney team, and I'm here to stop the count," it was covered as political theater. Yet when Al Gore was deciding how to respond to the situation, the media framed his choice as doing the right thing (folding) or serving his ambition (causing a constitutional crisis).

In the years since, though there is ample evidence that the Bush administration regards the Constitution as a set of barnacled suggestions, it has pretty much been left to the lefty blogosphere to assert (shrilly, say the mainstream media) that democracy is endangered.

President Bush's theory of the "unitary executive," which exempts the chief executive from the law; presidential "signing statements" that essentially nullify actions by the legislative branch; the extension of executive privilege beyond anything warranted by the courts; the "nuclear option" (renamed by Republican Sen. Orrin Hatch the "constitutional option") on cloture: These moves, and more, have arguably resulted in treaty-busting torture, warrantless wiretaps, the politicization of justice and a host of other injuries to freedom. But they have largely been reported as Washington-as-usual, not as democracy's slow-motion suicide.

Ironically, the only idea to which "constitutional crisis" seems to have been attached is the suggestion from the left that the president ought to be impeached — which is built into the Constitution but treated by the media as inconceivable.

Now, finally, work by committees chaired by Leahy, Rep. Henry Waxman (D-Los Angeles) and others has resulted in aggressive oversight, subpoenas and the flexing of legitimate check-and-balance powers. Now, finally, the media are belatedly discovering the analogy between Bush and President Nixon. "If the president does it, that means it is not illegal," Nixon said, and even a torpid press corps can't remain deaf to its contemporary resonance.

The media's motive for crying "constitutional crisis!" may be more about ratings than journalism, but that doesn't bother me. The real danger isn't that wall-to-wall coverage will sensationalize and trivialize a showdown. It's that the media, rather than attempting to sort out truth from falsehood, insight from talking points, principle from propaganda, will instead frame it, as it pretty much does all public issues, in the postmodern false equivalence of he-said/she said, concluding with "we'll have to leave it there."

Or maybe the real danger is that Lindsay Lohan will go on a bender and the media herd will move on, leaving the fate of democracy solely to C-SPAN junkies.

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