

Congress' dangerous show trial

By Michael A. Weinstein

In this bicentennial year of the Constitution, we should remember that congressional hearings are supposed to investigate situations that might require a legislative remedy. But the Iran-contra probe is really both less and more than that. There has been little said about any new laws emerging from the tortuous affair, but there has been a lot of talk about disciplining a wayward administration.

More than 100 years ago, Woodrow Wilson, then a history professor at Princeton, noted a weakness in our constitutional system of checks and balances among the different branches of government. Congress, which must make laws based on a supply of adequate information, has no ready means of ferreting out misconduct in the executive branch and of holding the administration accountable for it. When evidence of wrongdoing comes to light, only the extraordinary process of an investigation is available, with all of its consequences of disrupting the normal workings of government.

Wilson pointed out the danger that the investigative power could give us the worst of political worlds. Congress could cripple the effectiveness of the executive branch without being able to substitute responsible leadership, creating a policy vacuum.

Wilson's warning was far ahead of its time. Sen. Joseph McCarthy showed, in the 1950s, how the investigation could be twisted into a vehicle of character assassination for the purpose of personal political advantage. Far more serious was the Watergate probe, which resulted in the first resignation of a president in American history. Since Richard Nixon's fall, the extra-constitutional power of Congress to unmake a president has brooded over the executive branch, weakening it incalculably and encouraging just the kinds of secret activities that the Watergate disclosures were supposed to prevent.

Ronald Reagan was ballyhooed as the man who would restore the presidency to its proper strength within our constitutional system. But his supposed skills as the "great communicator" and the rhetoric of "mandate" did not prevent the passage of the Boland Amendments, which tied his hands in Central America. One may debate the prudence of supporting the contras in Nicaragua, but one cannot deny that Congress weakened executive initiative. As a consequence of congressional restraints, foreign policy was driven underground, into the White House basement.

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Whether Reagan knew about or even ordered the circumvention of the Boland Amendments is less important than that high officials in the executive branch ran an undercover foreign policy. Since only the executive has the means to conduct foreign affairs, the Iran-contra complex is an understandable, if not a praiseworthy, result of congressional muscle-flexing. Where international affairs are concerned, the executive is not the servant of Congress in the American system.

But now the ill-advised secret initiatives have come apart and there is a new investigation, which threatens to erode vital presidential power on the world stage even further. Woodrow Wilson, indeed, could not have foreseen the way in which an ambitious Congress, stacked with presidential hopefuls, would use its power to probe under the glare of the electronic media.

The early returns on the first phase of the Iran-contra hearings are in. An immediate and predictable effect is the hobbling of the Reagan presidency, which will put needed domestic legislation on the back burner and lead to an undue caution in foreign affairs. But the long-term results of the hearings threaten to cause far more damage to American government.

The experience that Congress had with Watergate has taught it how to perfect the investigation as a tool of public exposure and of self-aggrandizement for its members. Under the eager eye of the electronic media, the Iran-contra hearings have become the American equivalent of the show trials that Stalin conducted to humiliate his real and imagined enemies.

Everything has been calculated to mount a public spectacle aimed at conveying congressional dignity and responsibility. The counsel for the House-Senate committee have prepared all of their questions in advance, preliminary interviews have been conducted, research has been done and nothing has been left to chance. The witnesses dutifully come forward to present their programmed testimony and to be piously questioned by the dignitaries of the legislative branch. The public event is not meant to produce any new disclosures but to be a display of congressional magnificence, to make witnesses admit wrongdoing before the country and to extort apologies from them.

The success of a show trial in focusing national attention on Congress and enhancing its power through the ever-present threat of humiliation may be too tempting for the legislative branch to forgo in the future. In order to avoid the ordeal of investigation, the executive will be disposed toward caution and, perhaps, toward more self-defeating secrecy. The disciplinary function of the congressional investigation has gotten out of control, threatening a paralysis of leadership far into the future.