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Morning Bell: Imperial Presidency

Posted By [Matthew Spalding, Ph.D.](#) On June 22, 2012 @ 9:06 am In [First Principles](#) | [Comments Disabled](#)

The United States was born when rebellious colonists declared their independence from an imperial ruler who had vastly overstepped his bounds. "The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States," they wrote in their [Declaration of Independence](#) ^[1].

Today's presidency lacks the regal air of George III. But imperialism is back, in a big way.

Last week, the Obama Administration's Department of Homeland Security issued a [memorandum](#) ^[2] instructing U.S. immigration officials to use their "prosecutorial discretion" to create a policy scheme contrary to existing law, designed to implement legislation that Congress hasn't passed.

The President himself has admitted he doesn't have the authority to do this. "The idea of doing things on my own is very tempting, I promise you, not just on immigration reform. But that's not how our system works," he told Hispanic [activists last year](#) ^[3]. "That's not how our democracy functions."

Indeed.

We can now see before us a persistent pattern of disregard for the powers of the legislative branch in favor of administrative decision-making without—and often in spite of—congressional action. This violates the spirit—and potentially the letter—of the Constitution's separation of the legislative and executive powers of Congress and the President.

Examples abound:

- Even though the Democrat-controlled Senate rejected the President's cap-and-trade plan, his Environmental Protection Agency classified carbon dioxide, the compound that sustains vegetative life, as a pollutant so that it could regulate it under the Clean Air Act.
- After the Employee Free Choice Act—designed to bolster labor unions' dwindling membership rolls—was defeated by Congress, the National Labor Relations Board announced a rule that would implement "snap elections" for union representation, limiting employers' abilities to make their case to workers and virtually guaranteeing a higher rate of unionization at the expense of workplace democracy.
- After an Internet regulation proposal failed to make it through Congress, the Federal Communications Commission announced that it would regulate the Web anyway, even despite a federal court's ruling that it had no authority to do so.
- Although Congress consistently has barred the Department of Education from getting involved in curriculum matters, the Administration has offered waivers for the No Child Left Behind law in exchange for states adopting national education standards, all without congressional authorization.

Likewise, the Administration has often simply refused to enforce laws duly enacted by Congress:

- Since it objects to existing federal immigration laws, the Administration has decided to apply those laws selectively and actively prevent the state (like Arizona) from enforcing those laws themselves.
- Rather than push Congress to repeal federal laws against marijuana use, the Department of Justice (DOJ) simply decided it would no longer enforce those laws.
- DOJ also has announced that it would stop enforcing the Defense of Marriage Act or defending it from legal challenge rather than seeking legislative recourse.

On Tuesday, the President invoked executive privilege to avoid handing over some 1,300 documents in an [ongoing Congressional](#) ^[4] investigation. The Supreme Court has held that executive privilege cannot be invoked to shield wrongdoing. Is that what's happening in this case? "Congress needs to get to the bottom of that question to prevent an illegal invocation of executive privilege and further abuses of power. That will require an index of the withheld documents and an explanation of why each of them is covered by executive privilege—and more," Heritage legal scholar [Todd Gaziano](#)

[writes](#) ^[5].

Earlier this year the President crossed the threshold of constitutionality when he gave “recess appointments” to four officials who were subject to Senate confirmation, even though the Senate wasn’t in recess. Gaziano [wrote at the time](#) ^[6] that such appointments “would render the Senate’s advice and consent role to normal appointments almost meaningless. It is a grave constitutional wrong.”

There is no telling where such disregard may go next, but the trend is clear, and it leads further and further away from the constitutional rule of law.

The President has unique and powerful responsibilities in our constitutional system as chief executive officer, head of state, and commander in chief. Those powers do not include the authority to make laws or to decide which laws to enforce and which to ignore. The President – like judges or Members of Congress – takes an oath to uphold the Constitution in carrying out the responsibilities of his office.

Indeed, the President takes a unique oath, pledging he “shall faithfully execute the Office of President of the United States” and “preserve, protect and defend the Constitution of the United States.” We don’t need a new Declaration of Independence, but we do need a President who will defend and vigorously exert his or her legitimate powers, recognizing that those powers are not arbitrary or unlimited.

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Quick Hits:

- Yesterday, ratings agency [Moody’s downgraded 15 of the world’s largest banks](#) ^[8], including Bank of America, Citigroup and JP Morgan.
- On Fox News’ Hannity program, slain Border Patrol Agent Brian Terry’s parents [accused the White House of “lying” or “hiding something”](#) ^[9] in the Fast and Furious scandal.
- At yesterday White House press briefing, [Press Secretary Jay Carney could not recall the name of the slain border agent, Brian Terry](#) ^[10].
- New documents reveal the [White House may have steered lobbying contracts](#) ^[11] to political adviser David Axelrod’s firm during the debate over Obamacare, raising new ethical questions.
- Today, join us at 12:00 est to discuss the looming Taxmageddon and the effect it will have on you and your wallet. [Chat with us here about the largest tax hike in history that strikes in January](#) ^[12].

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URLs in this post:

[1] Declaration of Independence: http://www.archives.gov/exhibits/charters/declaration_transcript.html

[2] memorandum: <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>

[3] activists last year: http://articles.cnn.com/2011-07-25/politics/obama.la.raza_1_immigration-reform-immigration-system-janet-murguia?_s=PM:POLITICS

[4] ongoing Congressional: <http://blog.heritage.org/2012/06/21/morning-bell-president-obamas-fast-and-furious-scandal-grows/>

[5] Todd Gaziano writes: <http://blog.heritage.org/2012/06/20/fast-and-furious-executive-privilege-is-illegitimate-to-shield-wrongdoing/>

[6] wrote at the time: <http://blog.heritage.org/2012/01/04/a-tyrannical-abuse-of-power-obama-attempts-to-appoint-cordray-to-cfpb/>

[7] We Still Hold These Truths: <http://westillholdthesetruths.org/>

[8] Moody’s downgraded 15 of the world’s largest banks: <http://www.reuters.com/article/2012/06/22/us-financial-moodys-downgrades-idUSBRE85K1QL20120622>

[9] accused the White House of "lying" or "hiding something": <http://www.politico.com/news/stories/0612/77727.html>

[10] Press Secretary Jay Carney could not recall the name of the slain border agent, Brian Terry: http://www.realclearpolitics.com/video/2012/06/21/whs_carney_forgets_name_of_slain_border_patrol_agent.html

[11] White House may have steered lobbying contracts: <http://online.wsj.com/article/SB10001424052702304765304577480871706139792.html>

[12] Chat with us here about the largest tax hike in history that strikes in January: <http://blog.heritage.org/2012/06/21/online-chat-on-taxmageddon/>

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