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## **Letter from Washington**

Politics, as Bismarck observed, is like making sausage --- the end result may be pleasing but the process is ugly and unappetizing. The rhetoric on both sides of the Iran nuclear agreement has become so overwrought since the announcement of the framework agreement that some analysis and explanation of the sausage-making might be useful. Indeed, any astute international observer might look at the Executive versus Legislative battle unfolding and wonder who is really in charge here.

The powers of the Congress and the President are defined in Articles I and II of the Constitution, and reflect a certain wariness on the part of the founders. On the one hand, they had just fought a successful war for independence from a monarchy and absolutely did not want to trade a foreign king for a domestic one. On the other hand, as the landed stakeholders in the unfolding enterprise, they were equally wary of ceding too much power to the uneducated and unruly masses. Consequently the language in Articles I and II is highly specific in describing the powers and responsibilities of the Congress, but more vague in regard to the President. The idea of a President who would be the head of state as well as the chief of the executive branch of the government was untested and controversial, and the founders placed a number of checks on the President's ability to exercise the powers of the office.

For example, the President is the Commander-in-Chief, but the Congress is given the power to declare war. The President has the responsibility for the conduct of foreign affairs, but the Congress must approve his choice of Secretary of State and approve executive-negotiated treaties by a two-thirds vote. The President is the Chief Executive but the Congress appropriates all of the funds.

In the abstract, the President and the executive branch develop and execute foreign policy through:

- responding to events on the ground
- proposing legislation
- negotiating international agreements
- policy formulation, implementation and execution
- independent action.

The Congress can make foreign policy through:

- resolutions and policy statements
- legislative directives and restrictions
- elimination of funds through the appropriations process
- formal congressional oversight via committee hearings

All of which brings us to the current situation. The executive branch, in the form of the State Department, has negotiated some form of an agreement with the Iranians. This “framework” is to be used as an overarching concept that will guide the detailed development of a final agreement.

The one thing that is clear about the framework agreement is that each side has a vastly different view of what was agreed to in regard to inspections, lifting of sanctions and future activity. What is not clear at this point is whether the sides are posturing for internal consumption or whether there really is a fundamental divide on the basic issues. The President clearly has the constitutional authority to negotiate an agreement with Iran. What is not so clear is whether the Congress has a legitimate role in the negotiating process and approval authority over the final product.

Previous Presidents when negotiating international agreements that were critical to national security have mostly submitted the agreements for Congressional debate and approval before ratification, based on the implications for defense and the desire for shared responsibility and accountability. Agreements in the form of treaties have always required Congressional approval, but some agreements, particularly arms control accords, have been put in place as executive agreements.

In those previous agreements submitted for Congressional approval, the President had a relationship with the Legislative Branch that is different from the current administration. Rather than keeping the Congress informed in general terms of the status and substance of the negotiations, the Obama administration has taken the line that the Congress has no role in developing or approving the agreement and should just butt out. Clearly that approach has not worked well with this Congress and even members of the President’s own party have taken umbrage at the idea, leaving the Republican-controlled Senate to insert itself forcefully into the process.

The President can’t just stiff-arm the Senate since some of the sanctions placed on Iran were enacted by the Congress and will have to be undone if an agreement is reached successfully. The President’s position has been that the Congress should stay quiet and not undermine the negotiations that are taking place; the Senate’s position is that the Congress is a rightful player in the process and won’t be sidelined or quiet; both sides can point to some Constitutional basis for their claim.

The Senate Foreign Relations Committee today passed on a bill that will give the Congress the ability to approve or disapprove of the final agreement within a 60-day review period. That bill will reach the Senate floor shortly and a companion bill will probably be introduced in the House. Once passed by both Houses, the President will then have the option of vetoing the bill, which he may well do, viewing it as gross interference with the Chief Executive's prerogatives. The President will in effect be declaring war on the Senate, which will only make a deal with the Iranians that much more difficult for him to obtain.

In hindsight, the President must believe that he could have handled things differently and not be in this position. However, the United States is on the verge of the most significant national security agreement of the generation, negotiated by a President whose goals are apparently not as they were originally stated, and whose motives are unknown.

The President, as he so often does, has constructed a straw-man argument in favor of the agreement. The logic goes that the only alternative to this seemingly huge set of concessions to Iran is war, and anyone who could be opposed to it must be a warmonger. Generally speaking, name-calling and ad hominem attacks are the first sign of a weak argument.

The President is in a box of his own making. The Iranians say that they are not pursuing a nuclear weapons program, but the insistence on a robust inspection regime can only be explained by the belief that they are lying. If they are lying about the program, how can they be trusted to live up to the agreement?

More problematic, Iran is directly and indirectly responsible for the deaths of over 2,500 Americans in Iraq over the last 10 years. As a state sponsor of global terror Iran has initiated deadly attacks against the US military going back to the Beirut barracks bombing in 1983 and is not going to become suddenly tamed and domesticated by a piece of paper. The President is going to have a hard time selling the agreement as presently described to the American people. More importantly he is going to have to sell it to the members of his party up for reelection in 2016.

The point of departure for this letter was "who is in charge here?" The answer it seems is everyone...and no one. If there were even the slightest reservoir of good will for the President on the Hill this would probably not be happening the way it is, but Mr. Obama is not trusted by either party at this point, and there will be ongoing attempts to scuttle the negotiations with Iran.