

The Hormel ambassadorship

By Thomas L. Jipping

With his recess appointment of James Hormel to be ambassador to Luxembourg, President Clinton has again damaged the rule of law and subverted the Constitution for partisan political gain.

The nomination's merits have been debated since Mr. Clinton first nominated Mr. Hormel in 1997.

Mr. Hormel is an outspoken advocate of the homosexual political agenda and has associated himself with offensive attacks on those with religious objections to homosexuality. In addition, he has suggested his willingness to seek changes in the laws and public policies of other countries relating to homosexuality. Sending such a crusader as a diplomat to an overwhelmingly Catholic country is certainly highly controversial. Even more disturbing, however, is the means Mr. Clinton has used to do so.

The Constitution separates the federal government's powers into three branches with the means to check each other's power. Article II, for example, requires Senate consent for individuals to serve as ambassadors. This arrangement reflects the fact that ordered liberty is inversely related to the dimension and concentration of government power. As the Supreme Court stated in a 1991 case, the separation of powers was therefore "adopted by the Framers to ensure protection of our fundamental liberties." These principles must endure no matter which party controls the White House or the Senate. They only work if all those who take an oath to preserve, protect and defend the Constitution keep their word.

Mr. Clinton, however, has chosen to abandon these principles to achieve a partisan political objective. Knowing the Senate would not consent to Mr. Hormel's appointment through the legitimate constitutional process, Mr. Clinton has done an illegitimate end-run around that process.

The Constitution requires Senate consent for ambassadors to serve. In the very next clause, it also allows the president to "fill up vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end

of their next session." The reason for his exception is clear. When Senate sessions were much shorter and recesses much longer, vacancies occurring during a recess could take months to fill. Back then, the federal government was much smaller and, therefore, the importance of individuals in key posts was much greater. This emergency mechanism allowed filling vacancies that occur during recesses by lifting the formal consent requirement but limiting length of service.

We know by now that Mr. Clinton believes the Constitution means whatever he says it means. The Constitution focuses on when a vacancy occurs, allowing temporary

a specific provision designed for an emergency into a general provision eliminating any check on his appointment power. Ironically, Mr. Clinton revels in the Constitution's separation of powers when he uses the veto pen against the Republican Congress. Now, however, he ignores the Constitution when he tires of the very system he otherwise exploits.

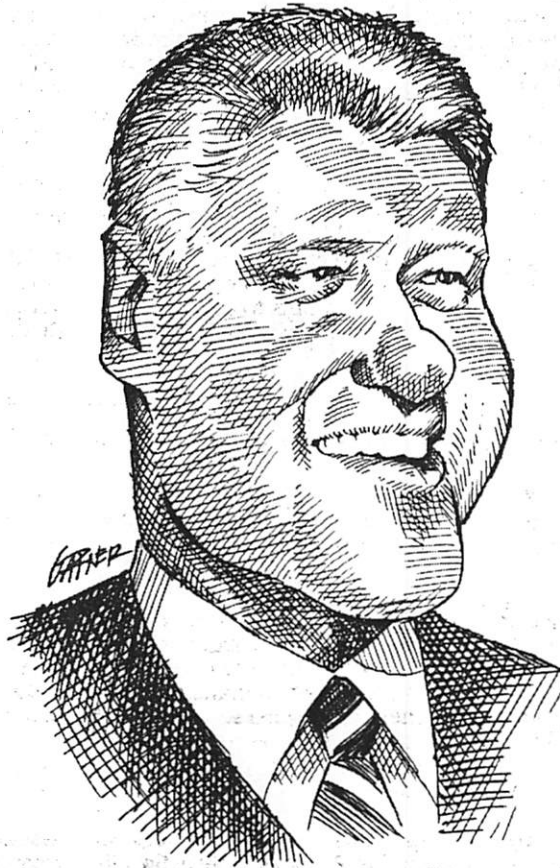
This is hardly the first time Mr. Clinton has abused his power and weakened the Constitution to pursue his objectives. Last year, Mr. Clinton used another gimmick to avoid the requirement of Senate confirmation. A federal statute allows for short-term appointments of key officials in an "acting" capacity. When the Senate refused to confirm his choice of Bill Lann Lee to be assistant attorney general for civil rights, Mr. Clinton used this statute to install Mr. Lee even though it did not even apply to him. Even if it did apply, Mr. Lee has now been illegally serving in that capacity far longer than the statute allows.

The Republican Senate did nothing about Mr. Clinton's abuse of the law to rig Mr. Lee's appointment. Is it any wonder, then, that Mr. Clinton has now gone further and abused the Constitution itself to appoint Mr. Hormel? Yet the Senate is not without tools to respond. When Democrats ran the Senate under President Ronald Reagan, they refused to confirm nominees until he agreed to consult with them on future recess appointments.

Then-Majority Leader Robert Byrd pontificated about the Senate's prerogatives and its constitutional role. So far, now that the partisan tables are turned, Mr. Byrd's silence is deafening.

Sen. James Inhofe has vowed to do the same thing now — and Majority Leader Trent Lott says he will back the effort. This step is completely justified, but will not be enough. The 1985 confrontation between Mr. Byrd and Mr. Reagan did nothing to stop misuse of the recess appointment power because it only applied prospectively. Rather than call for the same meaningless concession, then, senators now should demand that the appointment causing this current constitutional crisis be rescinded.

Otherwise, this president who cares nothing for the Constitution will find some other way of weaseling out of its restrictions on his power. That's what checks and balances are all about.



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