

## Issue of President's role comes to a head this month

by Nicholas F. Benton

The fundamental question of the role of the President of the United States, as defined by the U.S. Constitution, comes to a head this month in a series of critical confrontations between the administration and Congress. Among the key issues is the President's role as Commander-in-Chief of the Armed Forces, the principal figure responsible for assuring the national defense that the Preamble to the Constitution stipulates as a fundamental guarantee of the federal government.

This confrontation includes the matter of the defense budget—now threatened as never before by the insidious provisions of the new “automatic sequestering mechanism” of the Gramm-Rudman-Hollings deficit reduction law—and also the President's right to interpret the Anti-Ballistic Missile (ABM) Treaty and to command U.S. forces in the Persian Gulf.

Although President Reagan has demonstrated a frightening willingness to bend on some fundamental issues of national defense—reflected in his willingness to accede to the Soviets on an “agreement in principle” for a new Intermediate Nuclear Force (INF) missile reduction treaty that would seriously compromise the defense of Western Europe—it is doubtful he will go as far as Congress intends to push him this month.

Last October, it was Soviet leader Mikhail Gorbachov who tried to push Reagan over the edge at their summit in Reykjavik, and while Reagan shocked the world by his willingness to make concessions, without consulting the Allies, on the INF question, he nonetheless ultimately stiffened at the point that Gorbachov demanded he negotiate away the Strategic Defense Initiative (SDI). This October, Congress will be pushing the President to go far beyond what Gorbachov sought. The Congress, in its zeal to take control of

national defense policy away from the President, has naturally targeted Secretary of Defense Caspar Weinberger and other pro-SDI influences. But if those influences maintain their hold on the President's own basic instincts, Congress should find itself getting the same response that Gorbachov received a year ago.

The resulting stand-off would create the biggest constitutional crisis the nation has faced since the Civil War.

### The Bork fight

It is in anticipation of this constitutional crisis that both sides are fighting with such vehemence over who is going to fill the now-vacant ninth seat on the U.S. Supreme Court. The fight over the confirmation of Supreme Court nominee Judge Robert Bork has relatively nothing to do with his civil rights record, and has everything to do with how he will tilt the Supreme Court when it comes to ruling on a full-blown constitutional challenge to the President's role as Commander-in-Chief of the Armed Services.

If the Senate refuses to confirm Bork, then the administration will be faced with the necessity of finding another nominee whom it believes will uphold the President's rightful powers on this fundamental question. In Washington, the rumor mills have churned out three names of possible fallback candidates should Bork be rejected: Sen. Orrin Hatch (R-Utah), Sen. Howell Heflin (D-Ala.), and White House Chief of Staff Howard Baker.

Sources say the White House floated the Hatch rumor to frighten the Senate into accepting Bork as the “lesser evil.” On the other hand, Heflin was called into the White House for a one-on-one meeting with the President Oct. 1, the same day that a spate of southern Democrats announced for the first time their intention to vote against Bork, apparently

dooming his prospects for confirmation.

As for Baker, who has also been rumored to be "unhappy" in his role as White House Chief of Staff since he assumed the job in March, and is reportedly "looking for a change," he could be a fatal choice for the President if, in fact, he is being seriously considered. Baker tipped his hand on the constitutional question in a newspaper interview this summer, when he said he favored a "parliamentary system" over the present, Constitution-based system of "division of powers." A "parliamentary system" places virtually all powers of governing in the hands of the legislature, effectively eliminating the independence of the Executive Branch altogether.

The outcome of the battle over the choice for the ninth Supreme Court justice, be it Bork or another nominee, given the current zeal of Congress for stripping the national defense, will have permanent consequences for the survival of the nation.

### **The defense issue**

The constitutional crisis will emerge on three fronts pertaining to the President's function as Commander-In-Chief: the defense budget; development of the SDI vs. attempts by Congress to strangle it by assuming the right to "interpret" the ABM treaty according to a contrived, so-called "narrow" view; and, the Persian Gulf deployment in the face of attempts by Congress to impose a variant of the unconstitutional War Powers Act, aimed at removing all U.S. military presence from that region.

Although President Reagan signed into law the new Gramm-Rudman-Hollings "automatic sequestration mechanism" on Sept. 26, he made it clear he was doing so under protest, fully aware that over the next six weeks, before the automatic trigger is pulled, Congress will do all in its power to make sure the defense budget takes the maximum in cuts.

Two provisions in the law prejudice budget-cutting against the defense budget in a specific way. The first protects all programs for the coming fiscal year for which the Congress voted an increase in funding. Simply put, all the Congress's favorite spending programs are insulated, completely, from the "automatic sequester." Needless to say, Congress has already voted major cuts in the defense budget, meaning that it will not be among the privileged protected programs. The second provision provides that 50% of the entire amount that is to be cut from the budget by the "automatic sequestration mechanism" will come from the defense budget, even though defense accounts for only 27% of the total national budget.

Therefore, the consequences of the looming budget battle could be of unprecedented importance for the national defense. Deputy Secretary of Defense William H. Taft IV expressed this in an address to the Michigan Economics Club in Marquette Oct. 1. He said, "The most damaging result of congressional machinations with the budget is felt in national defense. Since 1982, Congress has cut \$125 billion from the President's defense request and the Fiscal Year 1987 defense budget was seven percent, in real terms, below the Fiscal

Year 1985 budget. Our FY88 defense proposal will again be cut—perhaps by as much as \$23 billion unless the President accepts a tax increase of \$60 billion over three years, in which case the defense request will be slashed only \$16 billion. As Secretary Weinberger has pointed out, in essence, Congress has said to the President, you do something unwise or we will do something dangerous. And Congress has no intention of using a tax increase to fund defense. . . ."

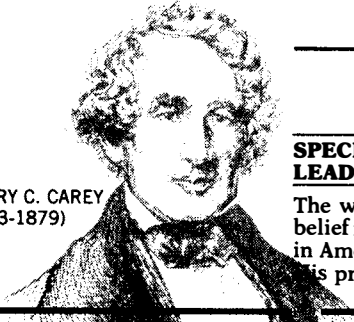
Taft went on: "But of greater potential damage than tax increases is the reenactment of the Gramm-Rudman-Hollings measure. Though deficit reduction is an unarguably good idea, the new version of this bill will be nothing less than catastrophic for defense. The 100th Congress has devised a byzantine scheme to protect politically popular programs and pet projects while raiding the defense budget in the name of deficit reduction. Under the new Gramm-Rudman formula, any program that Congress increased this year will be protected from cuts, while the defense budget is fair game. This is particularly disastrous. Unless we get relief from its provisions, we are going to have to find ways to cut even more severely our already lean force structure."

The Pentagon warned last year that cuts in the defense budget like those now being threatened by congressional action will require massive, direct cuts in military personnel, including cuts in programs that cannot be restored overnight in the event of a change of heart, such as in the officer corps, whose training requires years of preparation.

Deep cuts in active personnel will give Congress the incentive it needs to follow the initiative of Sen. Sam Nunn (D-Ga.) to vote a major U.S. troop withdrawal from Western Europe. This, coupled with the removal of all medium-range missiles from Europe under a new U.S.-Soviet INF treaty, will seriously destabilize the region politically, and Soviet assets planted throughout Western Europe will help tilt its survival impulse toward an independent accommodation with the East and de facto abandonment of the NATO alliance. Losing Western Europe's 374 million skilled people and \$3.5 trillion economy to the Soviet sphere of influence will tip the global strategic balance more dramatically and permanently than any other conceivable strategic development.

Taft warned in his speech of such consequences "unless we get relief from its [the Gramm-Rudman-Hollings law] provisions." As Taft noted, acquiescence in the tax increase demanded by Congress will not achieve this. The only way it can occur is if President Reagan, as Commander-in-Chief, steps in with a decisive action, taken out of a considered regard for imminent danger to the national security, to restore the defense budget to necessary levels through executive order. Reality dictates that the President has no other choice if he is going to carry out his role in accordance with the Constitution.

So the Supreme Court will have to decide, when that move, as well as the continued push on SDI development and the Gulf policy, precipitate the nation's most profound constitutional crisis.



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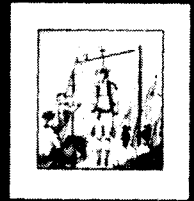
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