

From Washington

Congressional abdication?

Mark A. Bruzonsky

"It's a total abdication of responsibility by Congress!"

So spoke well-known conservative commentator, and former White House communications director in the Reagan years, Patrick Buchanan the other night closing the popular Cable News Network *Crossfire* show.

What Buchanan was commenting on, after interviewing two obviously emotionally concerned U.S. senators, was what he considers Congress' clear constitutional responsibility.

Either, Buchanan repeatedly pointed out, the Congress should give the president a declaration allowing for the U.S. to initiate a war against Iraq to push Iraq from Kuwait, or the Congress should refuse that authorisation and insist that the White House not launch offensive actions of the kind contemplated without congressional agreement.

The fact that Buchanan's well-known sympathies are in opposition to what he perceives to be Bush's rush to war with Iraq notwithstanding, Buchanan's point that the way Congress is handling itself smacks of abdication is one increasingly heard these days in political circles.

A number of rather interesting and potentially far-reaching constitutional and political developments are taking place here in Washington as the daily countdown to the January 15 Gulf deadline proceeds.

What is at stake is not only how events in the Gulf will transpire; but the very nature of representative democracy within the American constitutional system as well as the very relationship between the lawmaking and the executive branches of the U.S. government.

Very interestingly commentators from both wings of the American establishment — liberal and conservative is a better way of looking at the basic divide rather than Republican or Democrat — are more and more raising these basic issues of congressional responsibility and constitutional war-making powers.

Indeed, on the *Crossfire* telecast just mentioned — a show which is supposed to pit liberals against conservatives — both "opposing" hosts ended up agreeing with each other that the Congress is wrongly abdicating its responsibility. Furthermore both hosts also made it pretty clear that as far as they were concerned offensively striking out at Iraq on or after January 15 is a misguided and dangerous policy. Better to continue to rely on sanctions for the time being and not initiate a devastating offensive action — this is the message being heard from both ends of the political spectrum.

Furthermore, individual members of Congress are going a lot further now — after their holiday visits back home with constituents — with their warnings to the president. Many members of Congress are clearly positioning themselves as opponents of Bush's actions anticipating that events might continue to lead toward growing domestic turbulence.

During recent days protestors have been arrested outside the White House and anti-war teach-ins and demonstrations have begun taking place in major cities around the country. Major national demonstrations are now scheduled here in Washington on both January 19 and January 26 by competing anti-war coalitions.

And what's been said in public so far is just the beginning, for Congress is getting ready to carry out a major and possibly historic debate about both the situation in the Middle East and the constitutional war-making power.

Senator Fritz Hollings, for instance, has publicly declared that "Kuwait is not worth a single dead American soldier."

Congressman Richard Gephardt has spoken of a move to cut off congressional funding should President Bush launch a war on his own say so. "A grave constitutional crisis could result," Gephardt has suggested. And in response Senator Bob Dole has lashed out venomously at Gephardt and like-minded Democrats.

Senator David Bourne has declared that "Ultimately, before the president makes war, he must obtain a Declaration of War from

actions by the president.

Recently, on the popular NBC Sunday show *Meet the Press*, Senator Mitchell not only directly warned the president that he must obtain a congressional declaration to go to war but also said that in his view the Congress would not pass any kind of blank check resolution as the U.N. had done.

Other far less heard voices have begun going considerably further than these public officials in the Congress.

Former Marine officer and Pentagon official Daniel Ellsberg, famous for his leaking of the "Pentagon Papers" during the Vietnam

settlement. Indeed, the court went a step further by charting a path that members of Congress could use should they determine it necessary to stop the president from either launching or pursuing war.

In short, as the new year begins, American society is bubbling with concern. And all these political comments and manoeuvres are the public manifestation of that uneasiness and confusion.

The Democrats in Congress are clearly positioning themselves to try to retake the White House from the Republicans if Bush missteps. At the same time right wing Republicans are positioning themselves to put up an alternative Republican candidate next year should Bush's decline in the polls persist or should Bush's policies in the Gulf go badly.

Pat Buchanan himself is rumoured to be considering a run for the Oval Office. If an actor from California with very limited, intellectual abilities can make it to the Oval Office, Buchanan seems to be reasoning, why not a smart commentator like himself with experience in the White House both in the Nixon and Reagan years?

It's not unusual, of course, for an American president to attempt to evade and circumvent Congress on the issue of war-making powers. And since the Vietnam era the so-called "War Powers Act" has not proved any more effective than the constitution in getting the president to turn seriously to Congress for authority to initiate conflict.

But back at the time of Vietnam, President Johnson at least felt he had to get some kind of congressional OK, which is why he orchestrated the now infamous Gulf of Tonkin Resolution. Since that time the powers of the presidency have grown further; and the authority of Congress further declined.

What is also quite different this time is that a sitting president who has handled coalition building so carefully on the world chessboard seems so hamstrung and inept in building and keeping such coalitions right here at home.

Like the terribly politically damaging budget battles of last year, President Bush seems to be making major mistakes in judgement and tactics on the home front that may cost him dearly both in terms of peace of mind and future political confrontations.

It seems likely that the "no new taxes" and the "absolutely no compromise with Iraq" pledges are both destined to haunt President Bush far more than he originally anticipated. This "hyperbole" president may finally have to learn to stop quoting Rambo and start being a statesman and diplomat after all.

And so, to sum it all up, with all of these political convulsions in the air, it's difficult right now to know for sure who's bluffing more — George Bush or Saddam Hussein. — Mark Bruzonsky, 42, holds dual advanced degrees in international affairs from Princeton University and in law from New York University. He attended the Woodrow Wilson School at Princeton attaining a Masters in International Affairs (MIA); and then completed his law studies as a Root-Tilden Scholar receiving his Juris Doctor (J.D.).

During his graduate school years Bruzonsky also served as chief representative to the United Nations of the International Student Movement for the United Nations (ISMUM) travelling to 35 countries.

Prior to his graduate study Bruzonsky received his B.A. cum laude in government and economics from Lawrence University in Wisconsin, nicknamed "the Harvard of the Midwest."

TEXT OF LETTER FROM 127 LAW PROFESSORS TO SENATOR EDWARD KENNEDY

2 January 1991

Dear Senator Kennedy,

We, the undersigned law professors, write to express our firm conviction that the constitution requires the president to obtain prior express congressional authorisation before he may order United States armed forces to make war in the Persian

Gulf. We write to affirm our belief in this fundamental constitutional principle, not to express our views on the wisdom of any contemplated action.

Article I, Paragraph 8, Clause 11 of the constitution states that "Congress shall have power...[to] declare war." Although Article II, Paragraph 2, Clause 1 names the president as "commander-in-chief of the army and navy," we believe that the president may not invoke the authority to make war without consulting with and gaining the genuine approval of Congress.

The structure and history of our constitution compel this sharing of responsibility. Like other presidential powers, executive power to conduct war remains subject to the checks and balances vested by the constitution in Congress and the courts. "This system," in James Wilson's words, "will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large..." THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADDITION OF THE FEDERAL CONSTITUTION 528 (J. Eliot ed. 1888).

The fact that American troops have in the past participated in hostilities abroad without congressional authorisation does not alter this fundamental constitutional principle. The essential meaning of a constitutional provision cannot be altered by inaction on the part of prior Congress or presidents.

The constitution thus requires that the president meaningfully consult with Congress and receive its affirmative authorisation before engaging in acts of war. We further believe that Congress must manifest its approval through formal action, and legislative silence, stray remarks of individual members, or collateral legislative activity that the president or a court might construe to constitute "acquiescence" in executive acts.

We hope that our views will assist you and your colleagues as you prepare to discharge your constitutional responsibilities in this critical time for our nation.

Sincerely,

List of 127 names with school identification

the Congress."

"The president must come to the Congress and obtain a resolution allowing the use of force in the Middle East," Senator Brock Adams has insisted.

THIS 'HYPERBOLE' PRESIDENT MAY FINALLY HAVE TO LEARN TO STOP QUOTING RAMBO AND START BEING A STATESMAN AND DIPLOMAT.

In addition, Senator Ted Kennedy has taken the novel approach of presenting a petition to the White House signed by more than a hundred legal scholars declaring that the constitution demands that the Congress alone has the power and responsibility to decide for war or peace in the current circumstances.

Furthermore, both Senators George Mitchell, the majority leader, and Sam Nunn, one of the major voices on Capital Hill on matters relating to national security, have also publicly expressed repeated warnings to the White House against any unilateral

War, as well as former attorney-general of the U.S. Ramsey Clark, have called for the possible impeachment of President Bush if he launches an aggressive war against Iraq without a congressional declaration.

In addition, more than fifty members of Congress got the federal courts to take the unexpected and unprecedented step of indicating that should a majority of the Congress petition the courts for action against the executive branch under the circumstances that would develop if American forces attacked in the Gulf without congressional mandate, the courts might possibly intervene.

Though much of the press reported the results of this early court challenge as a victory for Bush, in reality it was not so at all. Rather than ducking the issue, rather than declaring the whole situation to fall without the judicial restraint doctrine of "political questions," the federal district court accepted jurisdiction while indicating that such a challenge was not ripe for

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