

The Real War Issue

President Nixon's return last week to the tired theme that his war critics are "naive" dupes of Hanoi indicates a desire to pose campaign debate over the nation's defense posture in terms as irrelevant and unilluminating as were the arguments over the missile gap and the future of Quemoy and Matsu in earlier election dialogues.

The purpose of the Republican campaign is to frighten voters with deceptive numbers games over defense cuts or with unfounded claims that American withdrawal from Vietnam would be tantamount to the abandonment of legitimate American interests and commitments everywhere. Once again, political homage will be paid to the absurd superstition that the peaceful settlement of any conflict is a re-enactment of appeasement at Munich.

The real issue is not how many missiles and nuclear submarines are needed to obliterate potential adversaries. Nor is it to determine what constitutes "peace with honor" in Vietnam when it is evident that secret policy-planning has dragged the United States into a war increasingly devoid of honor. A far more fundamental question is how the nation can be led back to conduct its foreign policies in the national interest under the rule of the Constitution.

Professor Alexander Bickel of the Yale Law School, a constitutional lawyer with basically conservative leanings, in an article in the current issue of *Commentary* examines the President's war-making powers under the Constitution and concludes: "President Lyndon Johnson did launch an unconstitutional war, and President Nixon, though entitled to wage *de facto* war until Congress stops him, should know, conservative lawyer that he is, that the war he wages was unconstitutional in its inception."

The framers of the Constitution deliberately separated the power of Congress to "declare" war from the President's power to "make" war. They did so because they knew that it is easier to resort to war than to keep the peace, and they therefore wanted to make it as difficult as possible to take the nation to war without the overwhelming support of the people.

Capacity for action, Professor Bickel writes, is the genius of the Presidency; its weakness is its regal insulation from the mood of the people—its broad incapacity to receive trustworthy communications from below.

Congress, by direct contrast, is admirably equipped to communicate but frequently finds it difficult to act quickly. In foreign affairs, particularly when there is a risk of warlike action, this can be an advantage. Except in the case of enemy attack, hasty resort to military action is usually ill-advised.

The Constitution, in giving to Congress, and not to the President, the power to declare war, intended to prevent such hasty action. It sought to create permanent institutional safeguards which, by demanding the approval of both houses of Congress, would eliminate the risk that the country might be led into wars by Presidential command decisions reached in secret agreement with advisers who are not responsible to the electorate.

What has happened in Indochina is the result of disregard by the White House of the Constitution and of abdication by Congress of its clearly assigned duty, even though the Constitution permits no such abdication.

It was against this background that Senator McGovern, in his acceptance speech, said that he had begun to seek the Presidency "in large part because during four administrations of both parties a terrible war has been charted behind closed doors." Such charting of secret policies, in disregard of constitutional processes of representative government, undermines the people's trust in their leaders and institutions.

How to turn away from the corruption of Presidential power and reassure the American people that their Government will not act arrogantly and in disregard of the Constitution are the real foreign policy issues of this Presidential campaign. Senator McGovern and President Nixon can perform a useful service by addressing themselves to those questions.