

## **EIR** Feature

# **Gramm-Rudman's backers plot against the Constitution**

by Edward Spannaus

"Gramm-Rudman will cause such a political and constitutional crisis, it will force people to see the need for constitutional reform." This is the view expressed recently by Peter Schlauffer, director of the Committee for Constitutional Reform, a group set up in 1981 to promote the replacement of the United States Constitution with a British-style parliamentary model of government.

That Schlauffer's committee is involved in somewhat more than mere academic contemplation of the subject, is highlighted by the critical role of attorney Lloyd Cutler in the current Gramm-Rudman crisis. Cutler, a key participant in both the Committee for Constitutional Reform and its sister organization, Project '87, represents the U.S. Comptroller General in the lawsuits now pending in federal court challenging the constitutionality of Gramm-Rudman.

Not only did Cutler defend the constitutionality of the Gramm-Rudman automatic budget-cutting mechanism during the Jan. 10 hearings on the lawsuits—when even the President and the attorney-general have conceded the probable unconstitutionality of the "sequestration" procedure—but it is his client, Comptroller General Charles Bowsher, who marched into the Oval Office on Jan. 21 to dictate budget cuts to the President of the United States. Applying a "strict construction" of Gramm-Rudman on advice of his lawyers, Bowsher, a little-known appointive official, ordered President Reagan to slash an additional \$44 million from military programs. He argued that the President had erroneously omitted \$6.3 billion of military spending authority from the total amount subject to automatic cuts this year.

During the Jan. 10 hearing, even the Justice Department was compelled to attack the constitutionality of the Comptroller General's role under Gramm-Rudman: Assistant Attorney General Richard K. Willard argued that "the President is made subordinate to another official in the execution of the law" and that "for the President to be made a mouthpiece of the Comptroller General" is repugnant to the Constitution. Cutler, however, defended the Gramm-Rudman scheme, taking the fanciful position that it does not violate the constitutional plan of the separation of powers, because the Comptroller General is not merely an arm of Congress, but

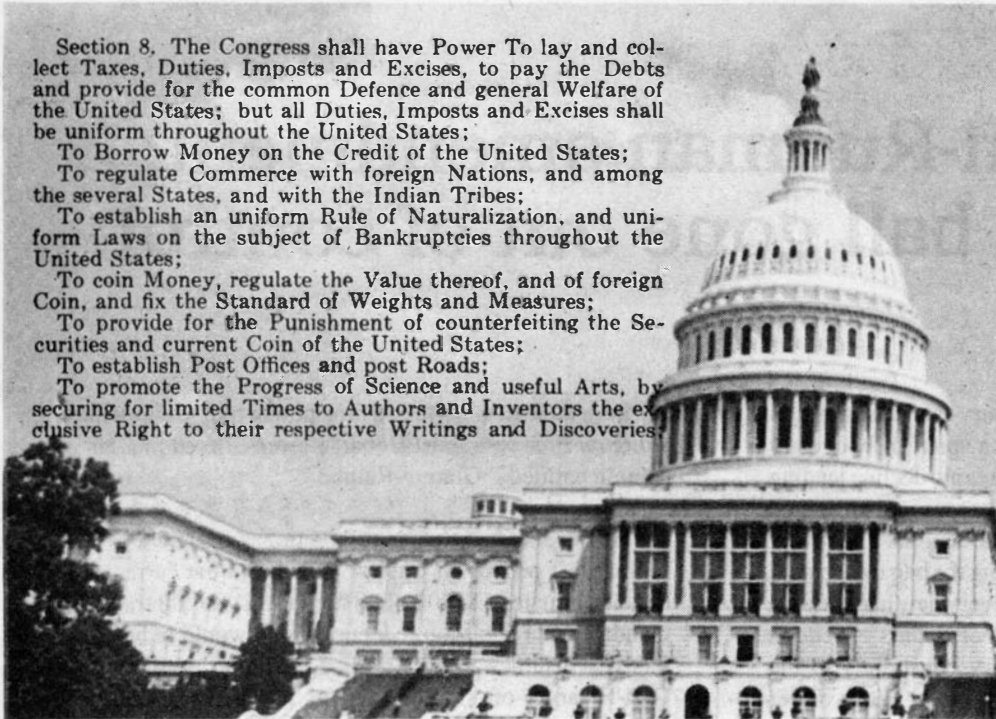
Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To Borrow Money on the Credit of the United States;  
 To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;  
 To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;  
 To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.



99th CONGRESS  
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REPORT  
99-423

INCREASING THE STATUTORY LIMIT ON THE PUBLIC DEBT

The Senate, 10, 1985. (Referred to the printed

Mr. ROSTENKOWSKI, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 372]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the amendments of the House of Representatives to the amendments of the Senate numbered 1 and 2 to the joint resolution (H.J. Res. 372) increasing the statutory limit on the public debt, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment to part (2) of the amendment of the House to the amendment of the Senate numbered 1.

Amendment numbered 2:

That the House recede from its disagreement to the amendment of the Senate to the amendment of the House to the amendment of the Senate numbered 2, and agree to the same with an amendment as follows:

In lieu of inserting the matter proposed to be inserted by the Senate amendment, insert the following at the end of the joint resolution:

TITLE II—DEFICIT REDUCTION PROCEDURES

SEC. 200. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Balanced Budget and Emergency Deficit Control Act of 1985."

(b) TABLE OF CONTENTS.—

Sec. 200. Short title and table of contents.

50-400

*The Gramm-Rudman amendment (above) rejects the U.S. Constitution's requirement that government "promote the general welfare"; further, it gives the power of the legislative branch over to computers at the General Accounting Office.*

is an independent officer of the United States. (Cutler failed to identify which Article of the Constitution provides for an "independent officer of the United States.")

Cutler has addressed the question of the Constitution and the separation of powers previously, in a rather more frank fashion. Writing in the Fall 1980 issue of *Foreign Affairs*, the journal of the New York Council on Foreign Relations, he wrote: "The separation of powers between the legislative and executive branches, whatever its merits in 1793, has become a structure that almost guarantees stalemate today. As we wonder why we are having such a difficult time making decisions we all know must be made, and projecting our power and leadership, we should reflect on whether this is one big reason."

Cutler cited budgetary requirements as one of the principal considerations. "During the second half of this century, our government has adopted a wide variety of national goals. Many of these goals—checking inflation, spurring economic growth, reducing unemployment, protecting our national security, assuring equal opportunity, increasing social security, cleaning up the environment, improving energy efficiency—conflict with one another, and all of them compete for the same resources. There may have been a time when we could simultaneously pursue all of these goals to the utmost. But even in a country as rich as this one, that time is now past."

What Cutler and the scrap-the-Constitution crowd hate most of all is the strong and independent Executive which our Constitution created. Under the guise of overcoming the "stalemate" created by conflicts between the Legislature and the Executive, they repeatedly emphasize the alleged virtues

of the parliamentary system, in which a premier or prime minister is selected from the ranks of the majority parliamentary faction, thereby ensuring the ability of a parliamentary majority to carry out its program. However, this model was explicitly rejected by the Framers of the Constitution, who insisted on the necessity of the strict separation of those who make the laws, from those who carry them out. That, of course, is precisely what has been obliterated by Gramm-Rudman.

The granddaddy of the 20th-century Constitution-busters was of course Charles Beard, with his "economic interpretation" of the Constitution. When Beard helped write a model state constitution for New York State in the 1920s, he wrote extensively on the need to get control of the budget out of the hands of politicians and into the hands of technocratic experts.

In an interview during 1981, Cutler elaborated on his perspective, noting that "many people think it's impractical or foolish to change the Constitution, but I believe we're making some progress." Cutler identified that budget reconciliation process in Congress as "a great step forward." "It brings us much closer to the parliamentary system," he said. "I believe that we are the only major government in the world where the legislature can vote a budget higher than what the head of government proposes. We should definitely strengthen the OMB [Office of Management and Budget], or create some other unit along these lines in the executive branch to keep control over the budget process."

What Cutler proposed in 1981, has come to pass with a vengeance in 1985-86.