Twitter Thread by Paul Poast



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Why are civil-mil scholars upset about Austin Lloyd's nomination as the 28th Secretary of Defense?

Consider the nomination of the 3rd Secretary of Defense: George Marshall

[THREAD]



In 1950, Truman wanted to fire the second SecDef, Louis Johnson, and install George Marshall as Secretary of Defense.



There was a problem: when the Department of Defense was created in 1947, section 202 of the 1947 National Security Act (which created the DoD, then called "The National Military Establishment") would not allow recently retired officers to serve as SecDef

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Secretary of Defense

Sec. 202.

(a) There shall be a Secretary of Defense, who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate: PROVIDED, That a person who has within ten years been on active duty as a commissioned officer in a Regular component of the armed services shall not be eligible for appointment as Secretary of Defense. The Secretary of Defense shall be the principal assistant to the President in all matters relating to the national security. Under the direction of the President and subject to the provisions of the Act he shall perform the following duties:

Marshall had only retired as a 5-star General in 1947



Of course, by 1950 Marshall had already served as Secretary of State and had proposed the "Marshall Plan" for the recovery of Europe



So Marshall was highly qualified and well respected.

But section 202 was perfectly clear that he couldn't be SecDef...unless the law was changed/suspended.

Truman wanted the provision suspended: the Korean War was starting and Truman needed Marshall's "unusual qualifications"



So Truman requested that the House Armed Services Committee & Senate Armed Services Committee put forward legislation to suspend the waiting period.

See, for example, H.R. 9646

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AN ACT

To authorize the President to appoint General of the Army George C. Marshall to the office of Secretary of Defense.

September 18, 1950
[H. R. 9646]
[Public Law 788]

But voting on and passing such legislation was not a given. Consider the remarks of California Senator William F. Knowland



He greatly feared precedent:

> I believe, regardless of the fact that you write this in for one man, it is the old story of the camel getting his head in under the tent. Once having waived the law, it is going to be far easier for the President or any President to ask for its waiver a second time.... I think it is a very serious step we are being asked to take. The committee may in its judgement—and apparently is prepared to go ahead and approve this and send it to the floor. But I want to emphasize that I think we are taking an unprecedented step and one that may rise to plague this nation in the years ahead, when it may not be George Marshall who is being suggested for the position.

This echoed one of the original rationales for the waiting period: it could ensure that the SecDef was truly the "President's representative", not "the military's representative".

Keep in mind that the 1947 legislation was essentially establishing, for the first time in US history, the apparatus for a large standing army.

The US had a long history of being wary of creating and maintaining such an entity.

For example, see what Alexander Hamilton wrote in Federalist Paper no. 8

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> In a country in the predicament last described, the contrary of all this happens. The perpetual menacings of danger oblige the government to be always prepared to repel it; its armies must be numerous enough for instant defense. The continual necessity for their services enhances the importance of the soldier, and proportionably degrades the condition of the citizen. The military state becomes elevated above the civil. The inhabitants of territories, often the theatre of war, are unavoidably subjected to frequent infringements on their rights, which serve to weaken their sense of those rights; and by degrees the people are brought to consider the soldiery not only as their protectors, but as their superiors. The transition from this disposition to that of considering them masters, is neither remote nor difficult; but it is very difficult to prevail upon a people under such impressions, to make a bold or effectual resistance to usurpations supported by the military power.

Indeed, during House floor debate over the legislation, some feared that the waiver constituted a "first step toward a military state".

But others, namely Representative Carl Vinson of Georgia, essentially said "what's the big deal?"



Specifically, Vinson pointed out that the President is a civilian, the National Security Council is comprised of civilians, etc.

Not only does his own background and personal convictions and public record shout the denial to that, but just what is the practical situation in the Government? We still have the President, a civilian.... We still have the National Security Council which formulates the Nation's military and foreign policies, headed by the President and composed of civilians outnumbering the Secretary of Defense. And of course we still have…the Senate and the House of Representatives, and the Supreme Court as well, all of which exercise civilian control over the Armed Forces and over the Secretary of Defense. So, while I subscribe to the principle set out in the Unification Act, the fact remains that this temporary suspension of the law cannot and assuredly will not have any hurtful impact on our governmental processes

In the end, considerations such as Vinson's and the perception that the Korean War (coupled with Marshall's qualifications) won out: the waiver was passed and, subsequently, Marshall was approved as SecDef.

For more into the details of Marshall's appointment, see the appendix of this excellent @CRS4Congress report by @kjmcinnis1. Indeed, the whole report is an outstanding primer on civil-mil control and the position of SecDef

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Statutory Restrictions on the Position of Secretary of Defense: Issues for Congress

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Overall, the debate over Austin will echo the debate over Mattis (in 2017) & Marshall (in 1950): concerns over elevating military officials into the highest ranks of government will be met with ■■■■.

But Biden, like Truman and Trump, will ultimately get who he wants.

[END]