

REMARKS

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Main

WE COME TOGETHER TO DISCUSS PRESIDENTIAL POWER
IN FOREIGN POLICY MAKING AT A CRITICAL TIME IN OUR
HISTORY.

AS WE NEAR THE 200TH YEAR OF OUR INDEPENDENCE,
we are involved once again in a debate
~~WE ARE ENGAGED IN A CONSTITUTIONAL CRISIS INVOLVING~~
constitutional NOT ONLY THE POWERS OF THE PRESIDENT *in foreign policy* ABROAD, BUT HIS
at home POWERS AT HOME AS WELL — *It has been termed*
a constitutional crisis — *Time to rethink*
and THIS CRISIS INVOLVES MORE THAN A DISPUTE BETWEEN *Direction*
TWO BRANCHES OF GOVERNMENT — ~~AS~~ *as the other* EACH ~~MORE~~ ZEALOUS IN
GUARDING ITS POWER AND PREROGATIVES ~~THAN THE OTHER~~

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Impoundment, Exec Agreements,
Executive Privilege,

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and MORE IS AT STAKE THAN ~~POWER OF~~ INSTITUTIONAL
PRIDE.

↳ NOR IS THIS MERELY A LEGAL OR ACADEMIC ISSUE.

↳ THE DIRECTION OF OUR NATION, ITS ROLE IN THE

WORLD; OUR GOVERNMENT'S COMMITMENT TO THE REAL NEEDS

OF THE AMERICAN PEOPLE COULD BE DETERMINED BY THE WAY

WE RESOLVE THIS CONSTITUTIONAL ~~ISSUE~~ ^{issue}.

↳ LET ME PLACE THE ISSUE OF PRESIDENTIAL POWER IN
PERSPECTIVE.

↳ WE ARE IN THE PROCESS OF ENDING OUR INVOLVEMENT
IN THE LONGEST WAR IN AMERICAN HISTORY.

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THE SIGNING OF THE PARIS PEACE ACCORDS COMES

28 YEARS AFTER THE END OF THE SECOND WORLD WAR.

IT IS IN THIS TWENTY-EIGHT-YEAR PERIOD THAT
PRESIDENTIAL POWER IN THE AREA OF FOREIGN POLICY HAS
BEEN GREATLY EXPANDED.

IT REACHED ITS ^{zenith} ~~peak~~ POGE IN 1972, AND I BELIEVE
1973 WILL BE THE YEAR IN WHICH IT IS ^{responsibly} CIRCUMSCRIBED
AND FURTHER DEFINED BY LAW.

A UNIQUE COMBINATION OF ^{events and forces} ~~INGREDIENTS~~ HAS BEEN
RESPONSIBLE FOR EXPANDING PRESIDENTIAL POWER IN FOREIGN
POLICY MAKING IN THE POST WORLD WAR PERIOD:

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--THE INTERNATIONAL CLIMATE OF COLD WAR; INTER-
MITTENT REGIONAL CLASHES AND A SPIRALING ARMS RACE

*Lebanon, Korea, Dominican Republic
Vietnam*

HAVE PROVIDED THE PRESIDENT WITH GREAT LATITUDE TO
CONDUCT FOREIGN POLICY AND TO MOBILIZE PUBLIC SUPPORT
FOR HIS POLICIES.

--STRONG PRESIDENTIAL PERSONALITIES HAVE BEEN
RESPONSIBLE FOR BUILDING A FAVORABLE PUBLIC CLIMATE

TOWARDS A STRONG PRESIDENTIAL ROLE IN FOREIGN POLICY.

strongwilled men in the Presidency

THEY HAVE ADDED TO THE PUBLIC PERCEPTION THAT ONLY THE

PRESIDENT CAN ACT IN FOREIGN POLICY MATTERS. *and protect*
the national interest.

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--THE CONGRESS, LACKING EXPERTISE, STAFF ORGAN-
IZATION, INFORMATION AND COMMUNICATION CHANNELS OF ITS

OWN HAS BEEN VIRTUALLY OVERWHELMED BY THE EXECUTIVE

BRANCH BUREAUCRACIES RESPONSIBLE FOR FOREIGN POLICY.

MAKING. *The conduct of*
This system itself has provided an excuse for
I MIGHT ALSO ADD THAT TOO OFTEN MEMBERS OF

CONGRESS *to stand* HAVE STOOD IDLY BY WHILE CONGRESSIONAL

POWER WAS USURPED.

THE PROCESS OF EVER EXPANDING PRESIDENTIAL POWER

IN FOREIGN POLICY MATTERS HAS ENABLED SUCCESSIVE PRES-

IDENTS TO BASE THEIR ACTIONS NOT ON LEGISLATIVE

AUTHORITY, BUT RATHER ON ~~INHERENT EXECUTIVE RESPONSIBILITIES~~

~~that ill-defined doctrine~~
of "inherent powers" vested in the
Presidency. ~~that~~ - the Presidential *mystery*

PRESIDENTIAL POWER HAS GROWN ~~AT THE COST OF A~~
~~TRULY RESPONSIVE PRESIDENCY.~~

~~IT HAS GROWN AT THE COST OF INCREASED ACCOUNT-~~ *reduced* *diminished*

account ABILITY AND PUBLIC SCRUTINY OF THE EXECUTIVE BRANCH,

↳ IT HAS GROWN AT THE COST OF RESPECT FOR AND CON-
FIDENCE IN THE CONSTITUTIONAL PROCESSES OF GOVERNMENT.

↳ JAMES MADISON WROTE IN THE FEDERALIST NO. 47 THAT
"THE ACCUMULATION OF ALL POWERS, LEGISLATIVE, EXECU-
TIVE AND JUDICIAL IN THE SAME HANDS, WHETHER OF ONE,
A FEW OR MANY, WHETHER HEREDITARY, SELF-APPOINTED OR
ELECTIVE MAY JUSTLY BE PRONOUNCED THE VERY DEFINITION
OF TYRANNY."

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THESE WORDS OF JAMES MADISON SEEM TO BE QUICKLY
FORGOTTEN WHEN A PRESIDENT ALERTS A NATION TO DANGER - *then*
TAKES CHARGE AND ~~THEN~~ ACTS. *But, as I see it,*

OUR CONSTITUTIONAL SYSTEM OF GOVERNMENT LENDS
ITSELF--DESPITE THE DOCTRINE OF SEPARATION OF POWERS--
TO THE USE OF PRESIDENTIAL POWER TO PURSUE AGGRESSIVELY
EXECUTIVE INITIATIVES.

*L*THE PRESIDENCY DOES NOT REQUIRE MAJORITY SUPPORT
IN CONGRESS AS DOES THE ~~BRITISH~~ PARLIAMENTARY SYSTEM.

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L THERE IS NO PARTY DISCIPLINE AND LITTLE PARTY *loyalty or*
ORGANIZATION. L PRESIDENTS OF STRONG WILL HAVE IN THE
PAST, DO IN THE PRESENT, AND WILL IN THE FUTURE, TAKE
ACTIONS THAT DO NOT REQUIRE CONSENT OF A MAJORITY OF
ELECTED REPRESENTATIVES.

L IN FACT, OUR NATION HAS FOUND ITSELF ON OCCASION
WITH TWO VOICES OF GOVERNMENT--EXECUTIVE AND LEGIS-
L LATIVE. L AND THEY HAVE OFTEN BEEN IN CONFLICT. L IN
THAT SITUATION, *and* IN THE AGE OF ELECTRONIC COMMUNICATION,
THE PRESIDENT HAS THE UPPER HAND UNLESS *defined*
LIMITS AND PERIMETERS ARE ESTABLISHED. L AND EVEN THIS
REQUIRES A TRADITION OF SELF-DISCIPLINE AND RESTRAINT
IN THE USE OF POWER.

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✓ THERE ARE THOSE IN OUR REPUBLIC WHO BELIEVE THAT
PRESIDENTIAL ACTIONS TAKEN IN THE NAME OF THE NATIONAL
INTEREST MAY NOT ALWAYS BE IN THE NATIONAL INTEREST--

✓ THAT ACTIONS TAKEN IN HASTE OFTEN NEED ^{ed more} DELIBERA-
TION--

AND THAT PRESIDENTIAL ACTIONS REQUIRE THE CONSENT
OF THE PEOPLE'S REPRESENTATIVES ASSEMBLED IN CONGRESS.

✓ IN NO AREA IS THE LIMITATION OF PRESIDENTIAL POWER
MORE ^{needed} ~~RESTRICTED~~ TODAY THAN WITH RESPECT TO THE PRESI-

DENT'S WAR-MAKING AUTHORITY. -

Lincoln quote

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THOUGH THE CONSTITUTION DIVIDES THE WAR POWER
BETWEEN THE CONGRESS AND THE EXECUTIVE, IT HAS BEEN
LEFT TO HISTORY TO DETERMINE WHO WILL HAVE THE
PREDOMINANT VOICE.

L BUT, ~~AS WE KNOW SO WELL,~~ WITH VERY FEW EXCEPTIONS,
THE POWER TO INITIATE AND WAGE WAR HAS SHIFTED TO THE
EXECUTIVE BRANCH.

L WRITING TO HIS FRIEND W. H. HERNDON IN 1848, TWO
YEARS AFTER PRESIDENT POLK SENT TROOPS LED BY ZACHARY
TAYLOR TO MEXICO, ABRAHAM LINCOLN SAID:

"ALLOW THE PRESIDENT TO INVADE A NEIGHBORING
NATION, WHENEVER HE SHALL DEEM IT NECESSARY
TO REPEL AN INVASION...AND YOU ALLOW HIM TO
MAKE WAR AT PLEASURE."

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THE PROBLEM OF "PRESIDENTIAL WAR" IS STILL WITH US, *and*

IT IS NOT UNIQUE TO RICHARD NIXON! *!* HOWEVER, HE HAS

GREATLY EXPANDED THE USE OF PRESIDENTIAL POWER IN THE
AREA OF FOREIGN POLICY AND NATIONAL SECURITY,

HE HAS GONE FURTHER THAN ANY OTHER CHIEF EXECUTIVE
IN CLAIMING AN UNLIMITED RIGHT TO COMMIT AMERICAN
FORCES TO COMBAT BY HIS OWN INITIATIVE.

--IN 1970, WITHOUT THE CONSENT OF CONGRESS, THE
PRESIDENT ORDERED AMERICAN TROOPS INTO CAMBODIA.

--IN 1971, AGAIN WITHOUT CONSULTATION WITH
CONGRESS, WIDESPREAD BOMBING OF LAOS WAS UNDERTAKEN.

In May 1972 - He ordered the mining of the Harbor of Haiphong

--IN DECEMBER OF 1972, HE RENEWED AND INTENSIFIED

AMERICAN BOMBING OF NORTH VIETNAM.

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--TODAY, THE AMERICAN BOMBING OF CAMBODIA CONTINUES.

L CAMBODIA IS A CLEAR EXAMPLE OF THE ABUSE OF
PRESIDENTIAL WAR POWER.

L THE ADMINISTRATION HAS BEEN DESPERATELY SEARCHING
FOR A LEGAL JUSTIFICATION OF THE CONTINUED BOMBING
WHEN THERE IS NO JUSTIFICATION.

But
L THE GULF OF TONKIN RESOLUTION HAS BEEN REPEALED.

L AMERICAN TROOPS HAVE BEEN WITHDRAWN, OUR PRISONERS *of war*
RELEASED.

and CAMBODIA DOES NOT BELONG TO SEATO.

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L PEACE ACCORDS HAVE BEEN SIGNED AND CONDITIONS
U AGREED TO BY BOTH SIDES.

L THE HOUSE OF REPRESENTATIVES HAS INDICATED THAT IT
DOES NOT APPROVE OF THE BOMBING BY REFUSING TO ALLOCATE
ADDITIONAL FUNDS FOR THIS PURPOSE.

L THE SENATE IS PREPARED TO VOTE A COMPLETE ~~FUNDS~~
of funds
CUT-OFF FOR AMERICAN OPERATIONS IN CAMBODIA.

L PRESIDENT NIXON FACES MORE THAN A MAJORITY PUBLIC
2401
OPINION HOSTILE TO HIS CONTINUATION OF AMERICAN AIR
ACTIVITIES IN CAMBODIA. *L* HE FACES A MAJORITY IN CON-

GRESS READY TO ENACT LEGISLATION WHICH WILL PREVENT HIM
FROM SENDING AMERICAN PLANES OVER CAMBODIA.

L IF HE CONTINUES TO ORDER THE BOMBING AFTER THE
CONGRESS HAS ACTED, HE WILL BE GUILTY OF A SERIOUS
VIOLATION OF THE LAW.

L COMMENDABLE AS THE PRESIDENT'S INITIATIVES WERE IN
SECURING THE VIETNAM PEACE ACCORDS, THESE AGREEMENTS
WERE REACHED WITHOUT CONSULTATION WITH CONGRESS.

L I AM NOT ATTEMPTING TO BE CRITICAL OF THE PRESI-
DENT'S EFFORTS IN THIS AREA.

L BUT I MUST RAISE THE ISSUE AND ASK! ARE WE ESTAB-
LISHING PRECEDENTS TO PLAGUE US AT ANOTHER TIME OR IS
THIS THE ONLY WAY THAT THE BUSINESS OF OUR FOREIGN
POLICY CAN BE CONDUCTED?

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[THE AMERICAN PUBLIC MUST UNDERSTAND THAT WHEN A PRESIDENT TAKES POWER NOT SPECIFICALLY DELEGATED TO HIM--AS THIS AND OTHER PRESIDENTS HAVE DONE--HE MUST TAKE THOSE POWERS FROM SOMEWHERE. AND THAT SOMEWHERE IS THE CONGRESS OF THE UNITED STATES.

[REDRESSING THE CONSTITUTIONAL BALANCE OF POWER IN THE FIELD OF FOREIGN POLICY IS NOT TO BE ACCOMPLISHED

EASILY OR QUICKLY. IT WILL REQUIRE THE FOLLOWING

time and perseverance
along with the following steps,

--PASSAGE OF THE WAR POWERS ACT WHICH SETS CONDITIONS OR CIRCUMSTANCES IN WHICH ARMED FORCES MAY BE COMMITTED TO COMBAT IN THE ABSENCE OF A CONGRESSIONAL DECLARATION OF WAR. A STRICT THIRTY DAY TIME LIMIT IS SET FOR SUCH ACTION.

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--ALL TREATIES AND AGREEMENTS NEGOTIATED BY THE
EXECUTIVE BRANCH MUST BE SUBMITTED TO THE SENATE *for ratification*

--REORGANIZATION OF THE CONGRESS SO THAT IT CAN
DEAL COHERENTLY WITH BUDGETS ALLOCATED FOR NATIONAL

SECURITY, FOREIGN ASSISTANCE, ~~ECONOMICS~~ AND TRADE

RELATIONS. *Congressional*
THE CREATION OF A JOINT COMMITTEE ON

NATIONAL SECURITY WOULD GREATLY AID IN PREVENTING

FRAGMENTATION OF CONGRESSIONAL ATTENTION ON FOREIGN

POLICY MATTERS.

| House &
Senate

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Finally
~~---LASTLY~~THE PRESIDENT *should* ~~MUST~~ RECOGNIZE THAT HEMUST SEEK PARTNERSHIP WITH THE CONGRESS INSTEAD OFCONFRONTATION, IF HE IS TO ACHIEVE HIS GOALS. / AS THE

LATE SENATOR VANDENBERG ONCE SAID: "CONGRESS MUST BE

PRESENT AT THE TAKEOFFS AS WELL AS THE CRASH LANDINGS."

↳ SOME PEOPLE LIKE TO COMPARE THE DOCTRINE OF
SHARED POWER BETWEEN PRESIDENTS AND CONGRESSES TO A
PENDULUM'S SWING.

↳ THEY SAY THAT WE NEED NOT WORRY WHEN IT MOVES
NEARER TO THE EXECUTIVE BECAUSE SOMEDAY IT WILL SWING
BACK TOWARDS THE CONGRESS.

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THE GREAT PROBLEM WITH THIS ANALOGY IS THAT THE

BALANCE OF POWER IS SET FORTH IN OUR CONSTITUTION.

THIS GREAT DOCUMENT ALLOWS SOME SHIFTING BACK AND

FORTH. BUT IT SETS OUTER LIMITS FOR THE PENDULUM'S

MOVEMENTS.

IT IS THESE OUTER LIMITS WHICH MUST BE RESPECTED

BY PRESIDENTS. IT IS THESE SAME OUTER LIMITS WHICH

THE CONGRESS MUST NOW DEFINE IN AREAS OF DOMESTIC

AND FOREIGN POLICY.

*When these defined
limits, the President must
be held responsible for
the conduct of our foreign
Policy.*



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