

# Presidential War Powers

Is the effort of Congress to pass a war-powers bill a threat to strong executive leadership in this age of super-powers and nuclear weapons? Some sincere citizens undoubtedly think so. The cult of the strong President has taken firm root in American soil. For several decades historians, politicians and journalists have been lauding Presidents who have outrun their constitutional authority, while consigning Presidents who have refused to make war without the consent of Congress to a lesser category as "weak executives."

Conscious of his place in history, every President tends therefore to broaden the powers of the office—to associate his name with glamorous events that history will remember. President Nixon is certainly no exception to this rule. "Each of us," he has said, "in his own way tries to leave [the Presidency] with as much respect and with as much strength in the world as he possibly can—that is his responsibility—and to do it the best way that he possibly can."

To support this view of their role, recent Presidents and their spokesmen have developed the doctrine of inherent powers, usually associated with the President's role as commander-in-chief. In his defense of the presidential war in Korea in the 1950s, Secretary of State Dean Acheson went so far as to say:

Not only has the President the authority to use the armed forces in carrying out the broad foreign policy of the United States and implementing treaties, but it is equally clear that this authority may not be interfered with by the Congress in the exercise of powers which it has under the Constitution.

Before President Johnson stepped up the fighting in Vietnam to the level of large-scale warfare, he did make a gesture of getting a blank check from Congress. But he stoutly contended that the Tonkin Gulf resolution was not necessary to what he was doing in Southeast Asia. The Nixon administration has been more guarded in its verbiage. Secretary of State William P. Rogers has repeatedly acknowledged before congressional committees that the President should seek legislative authority before initiating a new war, except in case of meeting an emergency, although he insisted that the invasions of Cambodia and Laos be regarded as exceptions on the ground that they were part of an on-going war. His reasoning seems to leave no excuse, however, for the current bomb-

ing of Cambodia after the war in Vietnam has been terminated. In any event, the claim of inherent power in the presidency to make war is being as flagrantly asserted in practice as ever before.

The basic issue that the country must now face is whether acceptance of this claim is essential to our national security and our position as a great power. Actually the risks that are involved in a broader role for Congress in this area of policy-making are grossly exaggerated. No one is proposing to cripple the President in his direction of international policy or to tie his hands in meeting an emergency. Most of the people who are now demanding corrective war-powers legislation want the President to continue exercising powerful leadership. It is a matter of fitting his leadership into the constitutional mold so as to curb the dangers of one-man decisions and to arrest the evolution toward tyranny.

Undoubtedly war-powers legislation would cause the White House some inconvenience. One-man decisions are always easier than democratic debate and justification of every step taken before the Congress and the people. But this is true of popular government in all of its aspects. It is far more complex than dictatorship and requires a much greater skill for the shaping and application of national policies. Human experience has left no doubt among free peoples, however, as to which process produces the best results.

The present posture of the administration favors a sharing of the war power in theory while denying it in practice. Secretary Rogers told the

Senate Foreign Relations Committee:

"There are few significant matters which can be accomplished by presidential order alone . . . the fact that even a minor skirmish could lead to a confrontation of the major powers and raise the specter of nuclear war, serves to emphasize the desirability of appropriate congressional participation in decisions which risk involving the United States in hostilities . . . we must be sure that such decisions [involving war or the risk of war] reflect the effective exercise by the Congress and the President of their respective constitutional responsibilities."

Mr. Rogers went so far as to tell the sponsors of the war-powers bill that their objectives "are the same as the objectives of this administration." He offered to explore with Congress the possibility of improving its information in regard to issues of war and peace and to talk about a joint congressional committee that could serve as a consultative body with the President. These suggestions have more recently been reiterated by the State Department's acting legal adviser, Charles N. Brower, but they are a lame response to the national demand for a check-rein on the President's power to make war.

The administrations negative view of the problem has been coupled with active opposition to the Javits bill passed by the Senate last year. The President likes the flexibility resulting from the absence of any meaningful legislation in this sphere and is loath to face any curtailment of his freedom of action. His strategy is obviously designed to thwart congressional action if possible or to keep the legislation innocuous if Congress insists on some action. In the background is an unquestioned threat of a veto if any meaningful war-powers bill is passed.

While the reluctance of all Presidents to be restrained can be readily understood, this attitude involves a fundamental inconsistency for the Nixon administration. The President's strongest bid for a place in history is as a man of peace. It is the subject that he loves most of all to talk about, and

he has made enormous contributions to a peaceful world by his withdrawal from Vietnam and his rapprochements with China and the Soviet Union. Why, then, should he continue to chip away at the image he is trying to build for history by refusing to cooperate in the restoration of the war-making power to its constitutional dimensions and by continuing to function under the discredited inherent-powers theory?

It is no answer to say that the President is trying to keep all the power to make war in his own hands in order to safeguard the national security. Regard for the national security and the public welfare is precisely what led the founding fathers to fear one-man rule in this sphere. They knew that a democracy could not be secure with its power concentrated in a few hands.

Perhaps it would be too much to expect the President to take the lead in righting the imbalance that has crept into our system. But he could at least cooperate with the constructive effort that Congress is making. There is much work yet to be done, especially in the House of Representatives.

It would be helpful if the administration would merely drop the pretense that the status quo is satisfactory. Secretary Rogers shocked the Senate by arguing for continued reliance on the present arrangement "that has worked so well for the most part, for 200 years." He could have intended to exempt Vietnam, but he did not do so, and in any event it is a rather frightening description of a system that involved the country in useless war for 12 years, at a cost of nearly 46,000 combat deaths and 303,000 wounded, without the sanction of our national policy-making body.

However benevolent the intentions of any administration in power, mere drifting along with a legal vacuum which produces such results is a dismal outlook for a dynamic democracy. Fortunately there is an alternative, which will be the subject of another article in this space.

*This is the second of three articles.*