

Impoundment: Once More Into Wonderland

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DESPITE a lengthening list of defeats in the lower federal courts, the Nixon administration seems determined to continue trying to impound, at will, money appropriated by Congress for programs the executive branch dislikes. The latest casualty reportedly is most of the \$550 million appropriated for rural and urban water and sewer grants. The administration, considering the programs redundant, first tried to "terminate" them by impounding the fiscal 1973 funds a year ago. Congress appropriated money for this year anyway, and now those funds are apparently being "non-spent." Some highway monies have also been held up.

The issue here is not whether the programs are good or bad, but whether the executive branch has the legal and constitutional authority to make such judgments unilaterally after Congress has provided the funds. With a remarkable degree of accord, federal judges across the country have now ruled in at least three dozen separate cases that impoundment exceeds the bounds of the administration's legal latitude. Most of the early decisions turned on the precise language of the laws involved, but recently judges have been more inclined to rest their rulings on general constitutional principles. For instance, Federal District Court Judge George Hart recently declared that if Congress insists funds should be spent, the executive branch has no choice but to comply. "It is the prerogative of Congress," Judge Hart said, "to spend money foolishly if it wants to, and the remedy is, I suppose, in the electorate."

The Nixon administration has magnified this problem of constitutional process by impounding billions in the most autocratic way. Last year, for instance, the administration claimed that housing subsidies and other urban

programs had been "terminated" because they were "inequitable, wasteful and ineffective." But documents have just become public which show that the programs were frozen *before* the Department of Housing and Urban Development had undertaken in-depth analysis or indeed provided any written justifications for the freeze at all. It calls to mind the juridical approach of the Red Queen in "Alice in Wonderland": "Sentence first—verdict afterward."

With the impoundment of water and sewer grant funds, the administration is back in Wonderland. The Labor-HEW appropriations act may be something of a turning point. In order to produce a measure which Mr. Nixon would sign, the conferees agreed to authorize the President to impound up to \$400 million, but specified that no program may be cut more than 5 per cent. If the administration abides by this—in other words, actually spends the rest of the \$32.9 billion appropriated in that act—it would be a refreshing change, since the executive branch impounded over \$1 billion from a smaller appropriation for fiscal 1973.

Meanwhile, Congress remains strangely reluctant to assert its own authority. Committees have not gone beyond spirited but non-binding language in reports. The general remedy, a stern anti-impoundment law, has been approved once by the Senate and, in different form, twice by the House, but the two bodies have shown little sense of urgency about reconciling their differences. Meanwhile, programs in many fields have been disrupted, and state and local governments and private groups are being forced to go to court at considerable expense to pry loose public funds which the Congress intended to provide.