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Church-Cooper Amendment Wouldn't Hurt Presidency

WASHINGTON—As the Senate moves toward a vote on limiting military operations in Southeast Asia, a clear distinction needs to be made between the powers of the Presidency, on the one hand, and the particular policy of a particular President, on the other. About the first, Congress can do nothing by statute; about the second, it can do much, if it will. The powers of the Presidency are stated and implied in the Constitution. That document states that the President is, among other things, the Commander-in-Chief of the Army and the Navy; and that statement implies a whole range of actions that a Commander-in-Chief must or may take.

Lincoln, for instance, construed his powers so broadly that, in Wilfred Binkley's description, in the emergency of Secession he "proclaimed the slaves of those in rebellion emancipated. He devised and put into execution his own peculiar plan of reconstruction. In disregard of law he increased the Army and Navy beyond the limits set by statute. The privilege of the writ of habeas corpus was suspended wholesale and martial law declared. Public money in the sum of millions was deliberately spent without congressional appropriation."

Lincoln was able to do this largely because, as his Senate spokesman, Browning of Illinois brilliantly stated: "When the Constitution made the President Commander-in-Chief of the Army and Navy of the United States it clothed him with the incidental powers necessary to a full, faithful, and forceful performance of the duties of that high office; and to decide what are military necessities and to devise and to execute the requisite measures to meet them, is one of these incidents."

Thus understood, the powers of the Presidency should not be at issue in the

controversy over the so-called Church-Cooper amendment to the military sales bill. That amendment would only prohibit the use of appropriated funds for a particular Presidential policy — that is, for retaining American forces in Cambodia, for supplying military advisers or mercenaries to the Cambodian government or for any combat air support of Cambodian forces.

Congress clearly has the right to restrict national policy in such a fashion — just as, for instance, it has the right to say that foreign aid shall be given in loans rather than in grants, or that most-favored-nation trade treatment shall not be given to certain nations. Last winter, President Nixon agreed to congressional limitations on the use of ground troops in Laos and Thailand. And no one would suggest that when a President asks Congress to endorse his policy — as in the Tonkin Gulf Resolution or the Mideast Resolution requested by President Eisenhower — Congress would not have the right to reject it instead.

Passage of the Church-Cooper amendment in the Senate alone would be a strong psychological limitation on Presidential policy; if the House adopted it also, it would be a legislative mandate.*

Nevertheless, this would not be a restriction on the powers of the Presidency, and that is the essential point.

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*President Nixon could veto it, but that would seem to belie his own pledges to withdraw from Cambodia...