

Moment of Truth

By Anthony Lewis

LONDON, June 27—The United States has had many Presidents who took a broad view of their power under the Constitution but never before has any President sought to amend the Constitution by himself—brazenly, defiantly, by fiat.

That is what President Nixon has just done in vetoing the appropriations bill that banned any further money for the bombing of Cambodia. Even after all that we have learned in these last months, after the Watergate and its associated crimes, the import of that veto is breathtaking.

What it amounts to is this. If Mr. Nixon has his way, the Constitution will effectively contain a new clause that says:

"The President shall have power to wage war unless the Congress, by a two-thirds vote of both houses, shall order him to desist."

It is crucial that as many Americans as possible understand what is involved. Our country has had so many crises of conscience and law in recent years that a certain weariness is understandable. But this one is of a different character—a genuine constitutional crisis, in the words of that moderate and gentle man, Senator Mike Mansfield.

An explanation in ABC terms is therefore required. It must begin with the original language of the Constitution, which vested in Congress alone the power "to declare war."

Over the years, Presidents have taken military action of various kinds without a previous formal declaration of war. That is part of modern history, a gloss on the Constitution.

But until now these Presidential military adventures have been of limited character or duration, or else have depended for their legal support on the effective consent of Congress. The recent example was the Tonkin Gulf Resolution, which the Johnson Administration used as the legal equivalent of a Congressional declaration in the Vietnam war.

The bombing of Cambodia since the Paris agreements on Vietnam has been something quite different. For here Congress had not implied its consent in any way, not by resolution and not by ratifying any treaty that covered Cambodia. Nor could the President cite his responsibility for the safety of any American troops.

Now President Nixon has gone one long step further. He claims independent authority to wage war, in the name of the United States, not only

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in the absence of Congressional approval but in the face of clear disapproval.

In short, he is attempting to reverse the constitutional assumption. Instead of the old idea that the United States should be at peace unless Congress declared otherwise, the new rule would be that a President may take his country into war—and keep it there indefinitely — unless Congress stops him.

And more than that, much more. For of course the veto provision of the Constitution requires two-third majorities to override. And by this veto Mr. Nixon would impose that same requirement on Congress—and on the American people who it represents—to stop a war.

The consequences of this veto, and of the House sustaining it, are therefore grave. The first is political, the crisis to which Senator Mansfield referred.

Unless events somehow dissipate the clash between the President and the Congressional majority, the talk of impeachment must now take a new and more immediate ground. For in the ultimate, if there is no other resolution, Congress is faced with an attempt at a Presidential coup d'état. It must consider its own ultimate weapon.

A second consequence is legal. The courts of the United States have been understandably wary of entertaining lawsuits that challenge the lawfulness of war-making. But that reluctance is likely to diminish when a President wages war in flagrant violation of law and the Constitution. On the legal merits, his attempt to impose a two-thirds rule on Congress' war power would certainly not protect any official sued by citizens seeking to enjoin unlawful military spending.

Finally, there is the consequence of conscience. Those of us who have opposed the war cannot be regarded as detached on this new question. And so it is fundamentally a problem for conservatives.

Will Barry Goldwater sit still for a unilateral Presidential amendment of the Constitution? Will Melvin Laird, who joined the White House staff as an avowed Congressional man? Will Elliot Richardson, who has begun to stake out his claim of independence as Attorney General? I hope and believe that the answer will be no.
