

# Nixon's Presidency: Crisis for Congress

By John Herbers Special to The New York Times

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WASHINGTON, March 4 —“You just think we're dumb,” Senator Clifford P. Case, Republican of New Jersey, told George P. Shultz, Secretary of the Treasury and Counselor to the President, during a recent hearing on Capitol Hill.

*This is the second of a series of articles on Richard M. Nixon's use of the powers of the Presidency and its effects on the Government and the national life.*

Senator Case was not only right about White House disdain of members of Congress, he was also understating it.

“Congress is lazy, too,” said a Presidential aide, pounding his fist on his desk for emphasis during a recent interview. “They work short hours. They don't know how to consult. They say they want to consult with the President, but then they come up here and don't say anything.”

“They criticize us for not advising or consulting them in military matters,” he continued. “But they cannot keep a secret. If we tell them anything it is out within 30 minutes after they have gone back to the Hill.”

That attitude toward Congress runs deep in the White House, and it underscores the seriousness of the struggle being waged between the executive and legislative branches of the Government as President Nixon, wielding perhaps more power than any President in history, moves into a second term with a landslide victory behind him.

At the heart of the contest is the President's recent move to reorder domestic priorities by impounding funds and liquidating some agencies despite Congressional mandates. But it also involves a general erosion of powers from the Congress to the Presidency, a process that has been under way for many years but has accelerated in the Nixon Administration.

A survey of a wide range of authorities on the Government during the last several weeks shows that, in the opinion of many, the struggle is so weighted to the side of the Presidency that if Mr. Nixon does not relax his demands—his aides insist that he will not Congress could be left far weaker than it already had become when Mr. Nixon took office in 1969.

“We are now in the midst of a grave and domestic constitutional crisis brought on by the Administration's unilateral efforts to reorder our domestic priorities,” said Senator Jacob K. Javits, Republican of New York, who actively supported Mr. Nixon's re-election. “This crisis covers every aspect of legislation pending in the Congress or which may be proposed.”

## Some Administration Concern

On the other hand, there is concern within the Administration that the fight will become so embittered and members of Congress so enraged that they will find ways to upset the President's goals and priorities.

"I agree 100 per cent with what the President is doing," said a high Administration official. "But I fear the spending fight with Congress may go too far."

Nevertheless, beyond the immediate issues and priorities, what is at stake is whether Congress survives as a strong and effective branch of the Government and whether more power continues to accumulate in the Presidency without accompanying restraints and means of accountability to the public, according to many students of government.

Some contend that the erosion of Congressional authority to the Presidency already has gone further under President Nixon than is generally recognized. Following are some of the developments:

¶ President Nixon broadened and institutionalized the war powers of his office by conducting the war in Southeast Asia at his pleasure under precedents and practices used by former President Johnson, but without as close consultation with Congress, which under the Constitution holds the authority to declare war. He also extended the practice of using executive agreements in foreign affairs in place of treaties, which require Senate approval. Thus, "an illegal war was ended by an illegal agreement," according to a Congressional staff member referring to the recent settlement of the war in Vietnam.

¶ While the nerve ends of many members of Congress were still raw from the long and bitter fight on war powers, President Nixon served notice in his recent budget message that in order to control inflation and carry out his campaign pledge not to seek a tax rise, he would not fund some programs enacted by Congress and would curtail others, with Great Society social programs enacted under Democrats in the nineteen-sixties bearing the brunt of the cuts. This went further than any other President had in moving against Congressional power to spend.

¶ Although his aides strongly deny it, it is the opinion of many, nonpartisan authorities on the subject that President Nixon has broadened the use of executive privilege to protect himself and members of his Administration from Congressional and public inquiry.

¶ Reorganization of the executive branch by the President has curtailed Congressional access and authority in some areas of the Government. For example, by increasing the budgetary controls by the executive branch over the regulatory agencies, a power that once

rested solely with Congress, the Administration forced the Federal Trade Commission, through a cut of funds, to cancel a planned investigation in hospital and medical practices, according to the testimony of the former commission chairman, Miles W. Kirkpatrick.

¶In a number of little ways, the Nixon Administration has defied Congress. When the Senate Finance Committee wanted to conduct its own study of the welfare situation, the Administration would not let the committee use its computers and would make only that information available for the computers that the Administration wanted it to have.

President Nixon, who terms himself an activist in the Presidency and views the office as the chief representative of the public, said in his Jan. 31 press conference that Congress represented special interests while the President represented all of the people.

“The Interior Committee wants to have more parks and the Agriculture Committee wants cheap R.E.A. [Rural Electrification Administration] loans and the Committee on Education and Labor wants more for education, and each of these wants we all sympathize with,” he said. “But there is only one place in this Government where somebody has got to speak not for the, special interests which the Congress represents but for the general interest.” That place, he said, is the White House.

### **Little Sought From Congress**

On the spending issue, President Nixon is in a unique position. He is the first President since the Federal budget became an important instrument in managing the economy—a development of the last two decades—to be caught in a position of having steadily rising Government costs collide head on with his policy for controlling inflation. That policy is to hold spending to a budget level of \$268-billion for the fiscal year, beginning July 1, rather than raising taxes.

The fight with Congress is essentially over which branch of the Government will decide which programs will be cut and by how much. Mr. Nixon has moved to do so by executive action while legislators contend that such power belongs to the Congress under the Constitution.

Further, according to sources both in and out of the Administration, there is not much Mr. Nixon wants from Congress this year. His program is for contracting many Government services, not expanding them.

Charles L. Schultze, who was budget director under President Johnson and is now with the Brookings Institution, pointed out in an interview that other recent Presidents all wanted something from Congress in legislation, usually quite a lot.

“In the past,” said Mr. Schultze, “funds would be impounded for a time, as Mr. Nixon is doing now, but they became a matter of negotiations between the President and Congress and eventually most of them would be released.”

“For at least 15 years,” he continued, “Presidents have been trying to get rid of the Rural Environmental Assistance Program or have it reduced, but they always gave in to Congress in the end because there was something they wanted from Congress. Now Nixon has simply cut it off and there is no bargaining position.”

### **A Test of Wills**

The program, called REAP, which helps farmers reclaim land, has been costing more than \$200-million a year. Congress, as a test of wills, is in the process of passing legislation that would force the President to spend the money, but White House sources say the President is confident that his opponents on the Hill can never muster the two-thirds vote in both houses needed to override his veto.

At the same time, the President's men are happily dismantling the Office of Economic Opportunity, the agency established by the Johnson Administration to help eradicate poverty, despite specific prohibitions in the law against doing so. White House lawyers say they are acting under other laws, delegations of power from Congress, that give the President authority to do so.

Nevertheless, Mr. Schultze and other experts agree that what Mr. Nixon is doing is boldly extending the power of the Presidency “in, degree if not in kind.” Mr. Schultze pointed out that the President's actions in impounding funds as Commander in Chief of the armed forces have far more precedent than impounding funds to eliminate entire domestic programs.

Thus President Jefferson's refusal to buy gunboats and President Truman's order to impound \$700-million appropriated for the Air Force, examples cited by Mr. Nixon and his assistants, are not precedents at all for what is being done now, according to Mr. Schultze.

On the use of executive privilege, a debate has raged between the White House and Congress on whether Mr. Nixon has expanded that power, which most authorities agree is needed to protect the autonomy of the Presidency but is usually used to hide waste, corruption or other misdeeds from the legislative branch.

A recent example of its use was the refusal by Air Force Secretary Robert C. Seamans Jr. to disclose the conversations he had with members of the White House in regard to the dismissal of A. Ernest Fitzgerald, who exposed the \$2-billion overrun on the C-5A transport plane.

John D. Ehrlichman, assistant to the President for domestic affairs, said in an interview with U. S. News & World Report Feb. 18 that Mr. Nixon had adopted a procedure to minimize the use of executive privilege. He said that Mr. Nixon had invoked the privilege only three times in four years, whereas President Kennedy invoked it six times in three years.

“The President has been very openhanded in providing witnesses and documents to the Congress,” he said.

Clark R. Mollenhoff, a former Nixon aide who is now Washington bureau chief for The Des Moines Register, has made a detailed study of the issue over a period of years. He contends that Mr. Nixon has broadened the use of executive privilege in several respects over practices of the Kennedy and Johnson Administrations, especially extending it to officials lower down the line.

“The President now says that all actions by White House officials can be treated as confidential and not subject to the subpoena process of the Congress or the courts,” Mr. Mollenhoff wrote.

“The White House game plan has been to refuse initially all requests for information that are potentially embarrassing, and to clothe all members of the White House staff with the ‘executive privilege,’” he said. “If the issue becomes too hot to handle, as it did in the International Telephone and Telegraph case, the President will permit the White House officials to appear and answer questions in a manner as restricted as the practical political situation allows.”

## **Law Is Passed Over**

President Nixon has extended powers over Congress in ways that have received little attention. After Franklin D. Roosevelt devalued the dollar during the Depression, Congress passed a law in 1945 providing that only Congress could set the price of gold, the step involved, in devaluation. Despite the law's explicit, provisions, however, Mr. Nixon has twice devalued the dollar by executive, action, and it drew no protest because of Congressional recognition that the world money markets should not be tipped off in advance, as Congressional action would have done.

This is an example of how power has steadily accumulated in the Presidency. Over the years, Congress and the President have repeatedly waged war over constitutional authority, but most of the fights in the 19th century and well into the 20th involved Presidential revolt against Congressional dominance.

## **Congress Struggles**

James A. Garfield in 1881, in fighting that dominance by refusing the advice of friends to compromise with a Senator on the appointment of the Federal collector of the Port of New York, said:

“If it were a difference between individuals there could be some sense in such advice. But the one represents a whole independent function of the Government. The other is one-seventy-sixth of one-half of another independent branch of the Government with which compound vulgar fractions the President is asked to compromise.”

Today it is Congress struggling to find ways to resist Presidential dominance.

In the past, once a President gained new powers they remained for his successors. Clinton Rossiter, the historian, wrote during the Eisenhower Administration that “strong Presidents have been followed by weak ones; in the aftermath of every ‘dictator,’ Congress has exulted in the restoration of the balance wisely ordained by the fathers. Yet the ebbs have been more apparent than real, and each new strong President has picked up where the last one left off.”

Presidential scholars, who have educated millions of Americans on the need for strong Presidency and are now frightened by the Nixon phenomenon, still by and large advocate a strong Presidency but want to keep a vital Congress as a check on the executive office.

Henry Steel Commager, asked for an answer to the current struggle, said, “One answer would be impeachment if the Congress had any guts, but it doesn't. The simple answer is to really assert the appropriation power.”

But the question is whether the country would support the Congress even in that endeavor. The Nixon White House is confident that it would not.