

REMARKS BY SENATOR HUBERT H. HUMPHREY

University of Virginia Law School
February 15, 1973

A Constitutional crisis is at hand in our nation, a crisis arising not from the normal pulls and tugs, checks and balances between the executive and legislative branches.

Rather, the crisis faced today is a deliberate, conscious and manufactured attempt to concentrate in the executive, power forbidden to it -- power over the purse.

And, the purpose of this confrontation is not to protect the public interest, but to sanctify an ideology and protect the special interest so long identified with Richard Nixon and the Republican Party.

The political strategy of the White House is clear:

-- engineer a confrontation between the legislative and Executive branches;

-- begin a coordinated high pressure public relations campaign designed to picture the Congress as the "big spenders";

-- draw the battle line by presenting a budget that decimates social programs in the name of holding down taxes;

-- illegally impound billions of dollars of Congressionally appropriated funds -- all in the name of the economy and efficiency.

And, as a result of all four tactics, the intention is to divide and overwhelm an embittered, stalemated Congress.

Article I, Section I, of the Constitution vests all legislative powers in the Congress of the United States. Section 9 of that same article says that no money shall be drawn from the Treasury, but in consequence of appropriations made by law.

Article II, Section 3, says that the President shall take care that the laws be faithfully executed.

There is a careful delineation of function here -- the power of the purse belongs to Congress. The duty of implementation is the responsibility of the executive.

But reality is hardly that simple. William Howard Taft once remarked, "Let anyone make the laws of the country, if I can construe them."

There perhaps is no better case in point than the impoundment of Congressionally appropriated funds. Impoundment can and does alter, change, or even terminate programs. It can and does significantly alter, change, or revise declared public policy. It can and does perform the function of item veto which is prohibited by the Constitution.

During the history of our nation, Presidents have withheld funds from such Congressionally approved programs as bomber and Air Force groups, food programs, flood control projects, model cities, highway construction, rural electrical programs and hospital construction.

But there are impoundments -- and then there are impoundments. First, funds may be withheld from a program to "effect savings or prevent deficiencies."

Thomas Jefferson refused to spend \$50,000 for gun boats on the Mississippi -- even though this money was appropriated by Congress. Jefferson said that the money was not needed. The United States had just purchased the Louisiana territory, and the threat that made gunboats necessary had abated. Jefferson was saving money.

And in 1905 and 1906, the Congress enacted the Anti-Deficiency Acts to prevent Executive agencies from hastily spending its complete appropriations and then seeking additional appropriations. These acts established a budget technique of monthly allotments to prevent undue expenditures.

In 1950, a clause was added to the Anti-Deficiency Acts that provided that moneys could be withheld to bring about "greater efficiency of operation," "to take into account changes in requirements," or "subsequent developments after the approval of the Appropriations."

Though these last three phrases are vague -- and in my judgment do not represent clear law, they nevertheless were never meant to be vehicles for thwarting the declared policy of Congress. The legislative history is not vague on that point -- the Anti-Deficiency Acts are instruments of accounting -- not of changing Congressional intent or policy purpose.

Nor were they meant to obviate the separation of powers doctrine in the guise of efficiency. Chief Justice Warren, in 1965, declared that separation of powers was "obviously not instituted with the idea that it would promote governmental efficiency. It was, to the contrary, looked to as a bulwark against tyranny."

Congressionally directed impoundment is a second type of fund withholding. In the 1968 Revenue and Expenditure Control Act, Congress fixed a spending ceiling and made about half the mandated budget cuts provided by that Act. The President was directed to make the other half of the required reductions.

Or another example: In Title VI of the 1964 Civil Rights Act, the President is directed to withhold funds from Federally financed programs in which there is evidence of discrimination.

All of these instances have these things in common: the Congress has expressly delegated to the President, in statute, and debate, and legislative history, the power to withhold funds. Congress directed the impoundment. The Executive did not automatically assume the power. In fact, the very act of Congress delegating or directing the President to impound funds was an expression of congressional authority and a recognition that the President did not have inherent power to act on his own initiative.

A third kind of impoundment I refer to as "defense impoundment." There is little question in my mind that the Constitution gives a President broad scope to exercise judgment in his capacity as Commander in Chief.

In fact, Presidents have used impoundment extensively in military matters. President Truman, in 1949, requested funds for only 48 Air Force groups. The Congress provided 58. Truman impounded the funds for the extra ten groups. But he did so upon an expression of legislative intent. The language of the Conference Committee read: "if the money is appropriated, it may not be used." President Eisenhower refused to spend money for anti-ballistic missiles until he was satisfied that the developmental tests would prove fruitful.

There is a fourth type of impoundment -- an impoundment I consider to be illegal -- that of Policy Impoundment.

Policy Impoundment is practised by President Nixon. It is the kind of impoundment that terminates programs enacted by Congress, such as the Rural Electrification Act; or significantly alters a program by severe cuts in the funding, such as the Water Pollution Control Act of 1972, where President Nixon's withholding has had a major impact on policy and program objectives.

Policy impoundment has resulted in substantial cuts in programs such as housing, water and sewer grants, and medical hospital construction -- thereby changing legislative intent.

Under policy impoundment, funds are withheld not to effect savings, not as directed by Congress, not as Commander in Chief, but because the President has unilaterally decided to impound money for programs that are not his priorities. It is a method of substituting Executive will for Congressional purpose.

Since 1970, President Nixon has consistently impounded eight to \$12 billion in Congressionally appropriated funds each year.

And, until last fall when Congress passed my Impoundment Information Act, the President neither explained, reported, or justified executive impoundment. He simply did it.

Policy impoundment is executive arrogance.

It encroaches upon the constitutional prerogatives of Congress.

It violates the separation of powers.

And, it gives the President an item veto -- neither sanctioned by the Constitution nor granted by Congress.

President Nixon claims that he possesses inherent Constitutional power to impound, first, to fight inflation, and second, to resolve the meaning of contradictory laws.

The President's Deputy Attorney General -- Joseph Sneed -- in testimony before the Separation of Powers Subcommittee, said that the President has inherent "latitude" to refuse to spend or defer spending regardless of Congressional action.

Such an assertion is to my mind a ^{blind} ~~broad~~ reading of the Constitution. An earlier Justice Department memorandum prepared by then Assistant Attorney General, now Supreme Court Justice, William H. Rehnquist, said:

"With respect to the suggestion that the President has a Constitutional power to decline to spend appropriated funds, we must conclude that existence of such a broad power is supported neither by reason nor precedent."

Those are unequivocal words.

Rehnquist is correct. There is no constitutional authority to impound funds, to terminate programs, or substitute the President's judgment for that of the Congress on domestic policy.

With respect to the inflation control argument, if impoundment is justified on the basis of fighting inflation or protecting the debt limit, then the President has picked a weak tool to combat a serious problem.

The Employment Act of 1946 places responsibility to "promote employment, production, and purchasing power" in the entire federal government -- not exclusively in the Executive branch. In addition, the most powerful means to fight inflation are anti-trust actions to increase competition, economic controls, cutting import restriction, increasing trade, and government fiscal and monetary policy.

Impoundment ought not to be substituted for these weapons in our fight against inflation.

The President is correct when he notes that Congress has in some instances passed contradictory laws. But, the way to resolve conflicts over contradictory laws is not to take unilateral Presidential action, but to return to the Congress and ask for a clarification. That is the responsible way -- the Constitutional way -- to make changes in policy.

By policy impoundment, the President of the United States is violating the comity that has so characterized Executive-Legislative relationships for two hundred years. And, despite an occasional statement that the President indeed wants cooperation with Congress, his attitude and actions speak differently.

Instead of hiding behind dubious constitutional arguments, the President and his advisers ought to level with the American people, and tell the people what they are really up to and what they really do not like.

And what they do not like is quite obvious. They do not like the fact that Congress has changed and challenged their priorities.

Congress has cut defense, military procurement, foreign aid, and space spending. It has increased funds for housing, community facilities, water and air pollution, poverty programs, education and health care.

What are the remedies to Presidential impoundment? Can Congress assert its will?

First, Congress can and has in the past established minimum levels of what must be accomplished with appropriated money. For example, in the fiscal year 1972 Veterans appropriation, Congress stipulated that the funds must provide not less than an average of 97,500 beds for Veterans Administration hospitals that year.

Second, Congress can use mandatory language such as the President is "directed," "shall," "must," "required," or "ordered" to spend appropriated funds. Congress has done so before, such as in the 1970 continuing resolution for education funds.

Congress, understandably, has been reluctant to use such language because it recognizes that conditions do change --that changes might be necessary in the spending of funds. But, until the Nixon Administration came into office, Congress and the President have always had a relationship that was informal but clearly understood on the use of funds.

That comity no longer exists. Perhaps mandatory language will have to become standard in all appropriation bills so that the President will clearly follow and execute the law.

Third, Congress can establish impoundment procedures to affirm or reject any fund withholding. Legislation presently before the Subcommittee on Separation of Powers would require Congress to affirm the legality of any proposed impoundment, otherwise the President would be directed to spend the funds.

Fourth, Congress could go -- and some members of the Senate and I have gone -- to court to force the President to use the appropriated funds. The courts have been reluctant to enter this thicket of Congressional-Executive confrontation. But it is my judgment that they can no longer stand back. The courts will have to make a decision on the impoundment question.

Finally, there must be continued political pressure on the Administration. The Administration has a practice of holding back money after an election, only to release it before the next election. The American people must mount the same kind of sustained political campaign that forced the President in 1970 to release education funds and in 1972 to release food stamps money. Public opinion is a powerful force, even on a stubborn President.

How will this constitutional crisis be resolved?

I would be less than candid if I said I knew the answer. I do know that the crisis is serious.

And, of one more thing I am certain. The President's vision of America evidenced in his illegal impoundments and his recently released budget, is not the vision of America that I see.

The President claims he knows America -- and Americans. He sees the self-made man, the self-sufficient, the free market, and the virtues of private enterprise.

Surely that is part of America, but it is not all of America.

There is a second America.

There is an America of compassion for its poor, its hungry, and its sick.

There is an America of devotion to helping others help themselves.

There is an America of great wealth, capable of great deeds, if only called to do so.

There is an America that is no longer content to be publicly poor and privately rich.

This is an America not found in the Nixon budget nor well served by a deepening Constitutional crisis precipitated by impoundment.

What America is really all about was well phrased in Franklin Delano Roosevelt's 1937 Inaugural Address. Looking out on a nation he described as one third ill-housed, ill-clad, ill-nourished, he said:

"The test of our progress is not whether we add to the abundance of those who have much; it is whether we provide enough for those who have too little."

This is an America Richard Nixon does not know or understand.

For Richard Nixon, America is in retreat. It is an America practising domestic disengagement, retrenching -- not to fight again but to abandon the cause of conquering our ills and enriching the lives of mankind.

It is not my vision of America.

My vision of America is found in the words of Carl Sandberg:

"I see America, not in the setting sun of a black night of despair ahead of us. I see America in the crimson light of a rising sun fresh from the burning, creative hand of God. I see great days ahead, great days possible to men and women of will and vision. . . ."

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• Freshman Senator
• Recycling

REMARKS BY SENATOR HUBERT H. HUMPHREY

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Charlottesville, Virginia

L A CONSTITUTIONAL CRISIS IS AT HAND IN OUR NATION,

L a CRISIS ARISING NOT FROM THE NORMAL PULLS AND TUGS, CHECKS

AND BALANCES BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES,

but RATHER, *a crisis due to* ~~THE CRISIS FACED TODAY~~ IS A DELIBERATE, CONSCIOUS

AND MANUFACTURED ATTEMPT TO CONCENTRATE IN THE EXECUTIVE,

POWER FORBIDDEN TO IT -- POWER OVER THE PURSE.

L AND, THE PURPOSE OF THIS CONFRONTATION IS NOT TO

PROTECT THE PUBLIC INTEREST, BUT TO SANCTIFY AN IDEOLOGY

AND PROTECT THE SPECIAL INTERESTS SO LONG IDENTIFIED WITH

RICHARD NIXON AND THE REPUBLICAN PARTY.

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↳ THE POLITICAL STRATEGY OF THE WHITE HOUSE IS CLEAR:

↳ ENGINEER A CONFRONTATION BETWEEN THE LEGISLATIVE AND

EXECUTIVE BRANCHES;

↳ BEGIN A COORDINATED HIGH PRESSURE PUBLIC RELATIONS

CAMPAIGN DESIGNED TO PICTURE THE CONGRESS AS THE "BIG

SPENDERS";

↳ DRAW THE BATTLE LINE BY PRESENTING A BUDGET THAT

DECIMATES SOCIAL PROGRAMS IN THE NAME OF HOLDING DOWN TAXES;

↳ ILLEGALLY IMPOUND BILLIONS OF DOLLARS OF CONGRESSIONALLY

APPROPRIATED FUNDS -- ALL IN THE NAME OF THE ECONOMY AND

EFFICIENCY.

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AND, AS A RESULT OF ALL FOUR TACTICS, THE INTENTION IS TO

DIVIDE AND OVERWHELM AN EMBITTERED, STALEMATED CONGRESS.

ARTICLE I, SECTION I, OF THE CONSTITUTION VESTS ALL

LEGISLATIVE POWERS IN THE CONGRESS OF THE UNITED STATES.

SECTION 9 OF THAT SAME ARTICLE SAYS THAT NO MONEY SHALL BE

DRAWN FROM THE TREASURY, BUT IN CONSEQUENCE OF APPROPRIATIONS

MADE BY LAW.

ARTICLE 2, SECTION 3, SAYS THAT THE PRESIDENT SHALL TAKE

CARE THAT THE LAWS BE FAITHFULLY EXECUTED,

THERE IS A CAREFUL DELINEATION OF FUNCTION HERE -- THE

POWER OF THE PURSE BELONGS TO CONGRESS, THE DUTY OF

IMPLEMENTATION IS THE RESPONSIBILITY OF THE EXECUTIVE.

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h BUT REALITY IS HARDLY THAT SIMPLE! WILLIAM

HOWARD TAFT ONCE REMARKED, "LET ANYONE MAKE THE LAWS OF THE
COUNTRY, IF I CAN CONSTRU THEM."!

h THERE PERHAPS IS NO BETTER CASE IN POINT THAN THE
IMPOUNDMENT OF CONGRESSIONALLY APPROPRIATED FUNDS.

h IMPOUNDMENT CAN AND DOES ALTER, CHANGE, OR EVEN TERMINATE
PROGRAMS. IT CAN AND DOES SIGNIFICANTLY ALTER, CHANGE, OR
REVISE DECLARED PUBLIC POLICY. IT CAN AND DOES PERFORM THE
FUNCTION OF ITEM VETO WHICH IS PROHIBITED BY THE CONSTITUTION.

h DURING THE ~~H~~ISTORY OF OUR NATION, PRESIDENTS HAVE WITHHELD
FUNDS FROM SUCH CONGRESSIONALLY APPROVED PROGRAMS ^{such} AS BOMBER
AND AIR FORCE GROUPS, FOOD PROGRAMS, FLOOD CONTROL PROJECTS,
MODEL CITIES, HIGHWAY CONSTRUCTION, RURAL ELECTRICAL PROGRAMS
AND HOSPITAL CONSTRUCTION.

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different kinds of Impoundments.
 BUT THERE ARE ~~IMPOUNDMENTS~~ -- AND THEN THERE ARE ~~IMPOUNDMENTS~~.

FIRST, FUNDS MAY BE WITHHELD FROM A PROGRAM TO "EFFECT

SAVINGS OR PREVENT DEFICIENCIES.

— This is authorized by law.

THOMAS JEFFERSON REFUSED TO SPEND \$50,000 FOR GUN BOATS ON

THE MISSISSIPPI -- EVEN THOUGH THIS MONEY WAS APPROPRIATED

BY CONGRESS. JEFFERSON SAID THAT THE MONEY WAS NOT NEEDED.

THE UNITED STATES HAD JUST PURCHASED THE LOUISIANA TERRITORY,

AND THE THREAT THAT MADE GUNBOATS NECESSARY HAD ABATED.

JEFFERSON WAS SAVING MONEY.

AND IN 1905 AND 1906, THE CONGRESS ENACTED THE ANTI-

DEFICIENCY ACTS TO PREVENT EXECUTIVE AGENCIES FROM HASTILY

SPENDING ^{their} ~~ITS~~ COMPLETE APPROPRIATIONS AND THEN SEEKING ADDITIONAL

APPROPRIATIONS. THESE ACTS ESTABLISHED A BUDGET TECHNIQUE OF

MONTHLY ALLOTMENTS TO PREVENT UNDUE EXPENDITURES.

L In 1950, A CLAUSE WAS ADDED TO THE ANTI-DEFICIENCY ACTS
THAT PROVIDED THAT MONEYS COULD BE WITHHELD TO BRING ABOUT
"GREATER EFFICIENCY OF OPERATION," "TO TAKE INTO ACCOUNT
CHANGES IN REQUIREMENTS," OR "SUBSEQUENT DEVELOPMENTS
AFTER THE APPROVAL OF THE APPROPRIATIONS."

L THOUGH THESE LAST THREE PHRASES ARE VAGUE -- AND IN MY
JUDGMENT DO NOT REPRESENT CLEAR LAW, THEY NEVERTHELESS WERE
~~not~~ ~~NEVER~~ MEANT TO BE VEHICLES FOR THWARTING THE DECLARED
POLICY OF CONGRESS. THE LEGISLATIVE HISTORY IS NOT VAGUE
ON THAT POINT -- THE ANTI-DEFICIENCY ACTS ARE INSTRUMENTS
OF ACCOUNTING -- NOT OF CHANGING CONGRESSIONAL INTENT
OR POLICY. ~~SUPPOSE~~

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L NOR WERE THEY MEANT TO OBVIATE THE SEPARATION OF POWERS
DOCTRINE IN THE GUISE OF EFFICIENCY / CHIEF JUSTICE

WARREN, IN 1965, DECLARED THAT SEPARATION OF POWERS WAS

"OBVIOUSLY NOT INSTITUTED WITH THE IDEA THAT IT WOULD PROMOTE

GOVERNMENTAL EFFICIENCY. / IT WAS, TO THE CONTRARY, LOOKED TO AS

A BULWARK AGAINST TYRANNY."

L CONGRESSIONALLY DIRECTED IMPOUNDMENT IS A SECOND TYPE OF

FUND WITHHOLDING. / IN THE 1968 REVENUE AND EXPENDITURE

CONTROL ACT, CONGRESS FIXED A SPENDING CEILING AND MADE ABOUT

HALF THE MANDATED BUDGET CUTS PROVIDED BY THAT ACT. / THE

PRESIDENT WAS DIRECTED TO MAKE THE OTHER HALF OF THE REQUIRED

REDUCTIONS. *Here the President was carrying out a congressional directive.*

L OR ANOTHER EXAMPLE: IN TITLE VI OF THE 1964 CIVIL RIGHTS
ACT, THE PRESIDENT IS DIRECTED TO WITHHOLD FUNDS FROM FEDERALLY
FINANCED PROGRAMS IN WHICH THERE IS EVIDENCE OF DISCRIMINATION.

L ALL OF THESE INSTANCES HAVE THESE THINGS IN COMMON; THE
CONGRESS HAS EXPRESSLY DELEGATED TO THE PRESIDENT, IN STATUTE,
AND DEBATE, AND LEGISLATIVE HISTORY, THE POWER TO WITHHOLD
FUNDS. CONGRESS DIRECTED THE IMPOUNDMENT. THE EXECUTIVE
DID NOT AUTOMATICALLY ASSUME THE POWER. IN FACT, THE VERY
ACT OF CONGRESS DELEGATING OR DIRECTING THE PRESIDENT TO
IMPOUND FUNDS WAS AN EXPRESSION OF CONGRESSIONAL AUTHORITY
AND A RECOGNITION THAT THE PRESIDENT DID NOT HAVE INHERENT
POWER TO ACT ON HIS OWN INITIATIVE.

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└ A THIRD KIND OF IMPOUNDMENT I REFER TO AS "DEFENSE
IMPOUNDMENT. └ THERE IS LITTLE QUESTION IN MY MIND THAT
THE CONSTITUTION GIVES A PRESIDENT BROAD SCOPE TO EXERCISE
JUDGMENT IN HIS CAPACITY AS COMMANDER IN CHIEF.

└ IN FACT, PRESIDENTS HAVE USED IMPOUNDMENT EXTENSIVELY
IN MILITARY MATTERS. └ PRESIDENT TRUMAN, IN 1949, REQUESTED
FUNDS FOR ONLY 48 AIR FORCE GROUPS. └ THE CONGRESS PROVIDED
58. └ TRUMAN IMPOUNDED THE FUNDS FOR THE EXTRA TEN GROUPS.

BUT HE DID SO UPON AN EXPRESSION OF LEGISLATIVE INTENT.

└ THE LANGUAGE OF THE CONFERENCE COMMITTEE ^{Report} READ: "IF THE
MONEY IS APPROPRIATED, IT MAY NOT BE USED." └ PRESIDENT

EISENHOWER REFUSED TO SPEND MONEY FOR ANTI-BALLISTIC MISSILES
UNTIL HE WAS SATISFIED THAT THE DEVELOPMENTAL TESTS WOULD
PROVE FRUITFUL.

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L THERE IS A FOURTH TYPE OF IMPOUNDMENT -- AN IMPOUNDMENT
I CONSIDER TO BE ILLEGAL -- THAT OF POLICY IMPOUNDMENT.

L POLICY IMPOUNDMENT IS PRACTISED BY PRESIDENT NIXON. IT IS
THE KIND OF IMPOUNDMENT THAT TERMINATES PROGRAMS ENACTED
BY CONGRESS, SUCH AS THE RURAL ELECTRIFICATION ACT, OR
SIGNIFICANTLY ALTERS A PROGRAM BY SEVERE CUTS IN THE FUNDING,
SUCH AS THE WATER POLLUTION CONTROL ACT OF 1972, WHERE
PRESIDENT NIXON'S WITHHOLDING HAS HAD A MAJOR IMPACT ON
POLICY AND PROGRAM OBJECTIVES.

L POLICY IMPOUNDMENT HAS RESULTED IN SUBSTANTIAL
CUTS IN PROGRAMS SUCH AS HOUSING, WATER AND SEWER GRANTS,
AND MEDICAL HOSPITAL CONSTRUCTION *facilities and* -- THEREBY CHANGING
LEGISLATIVE INTENT.

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L UNDER POLICY IMPOUNDMENT, FUNDS ARE WITHHELD NOT TO
EFFECT SAVINGS, NOT AS DIRECTED BY CONGRESS, NOT AS COMMANDER IN
CHIEF, BUT BECAUSE THE PRESIDENT HAS UNILATERALLY DECIDED TO
IMPOUND MONEY FOR PROGRAMS THAT ARE NOT HIS PRIORITIES.

L IT IS A METHOD OF SUBSTITUTING EXECUTIVE WILL FOR
CONGRESSIONAL PURPOSE.

L SINCE 1970, PRESIDENT NIXON HAS CONSISTENTLY IMPOUNDED
EIGHT TO \$12 BILLION IN CONGRESSIONALLY APPROPRIATED
FUNDS EACH YEAR.

L AND, UNTIL LAST FALL WHEN CONGRESS PASSED MY IMPOUNDMENT
INFORMATION ACT, THE PRESIDENT NEITHER EXPLAINED, REPORTED,
OR JUSTIFIED EXECUTIVE IMPOUNDMENT. HE SIMPLY DID IT!

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L POLICY IMPOUNDMENT IS EXECUTIVE ARROGANCE.

L IT ENCROACHES UPON THE CONSTITUTIONAL PREROGATIVES OF CONGRESS.

L IT VIOLATES THE SEPARATION OF POWERS.

L AND, IT GIVES THE PRESIDENT AN ITEM VETO -- NEITHER

SANCTIONED BY THE CONSTITUTION NOR GRANTED BY CONGRESS.

But PRESIDENT NIXON CLAIMS THAT HE POSSESSES INHERENT

CONSTITUTIONAL POWER TO IMPOUND, FIRST, TO FIGHT INFLATION,

AND SECOND, TO RESOLVE THE MEANING OF CONTRADICTIONARY LAWS.

~~back~~ THE PRESIDENT'S DEPUTY ATTORNEY GENERAL --

JOSEPH SNEED -- IN TESTIMONY BEFORE THE SEPARATION OF POWERS

SUBCOMMITTEE, SAID THAT THE PRESIDENT HAS INHERENT "LATITUDE"

TO REFUSE TO SPEND OR DEFER SPENDING REGARDLESS OF CONGRESSIONAL

ACTION.

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L SUCH AN ASSERTION IS TO MY MIND A ^{BLIND} ~~==~~ READING OF THE
CONSTITUTION, ^{a 1969} JUSTICE DEPARTMENT MEMORANDUM PREPARED
BY THEN ASSISTANT ATTORNEY GENERAL, NOW SUPREME COURT JUSTICE,
WILLIAM H. REHNQUIST, SAID:

"WITH RESPECT TO THE SUGGESTION THAT THE PRESIDENT
HAS A CONSTITUTIONAL POWER TO DECLINE TO SPEND APPROPRIATED
FUNDS, WE MUST CONCLUDE THAT EXISTENCE OF SUCH A BROAD
POWER IS SUPPORTED NEITHER BY REASON NOR PRECEDENT."

THOSE ARE UNEQUIVOCAL WORDS.

L REHNQUIST IS CORRECT THERE IS NO CONSTITUTIONAL AUTHORITY
TO IMPOUND FUNDS, TO TERMINATE PROGRAMS, OR SUBSTITUTE
THE PRESIDENT'S JUDGMENT FOR THAT OF THE CONGRESS ON DOMESTIC
POLICY.

WITH RESPECT TO THE INFLATION CONTROL ARGUMENT, IF IMPOUNDMENT
IS JUSTIFIED ON THE BASIS OF FIGHTING INFLATION OR PROTECTING
THE DEBT LIMIT, THEN THE PRESIDENT HAS PICKED A WEAK TOOL
TO COMBAT A SERIOUS PROBLEM.

THE EMPLOYMENT ACT OF 1946 PLACES RESPONSIBILITY TO
"PROMOTE EMPLOYMENT, PRODUCTION, AND PURCHASING POWER"

IN THE ENTIRE FEDERAL GOVERNMENT -- NOT EXCLUSIVELY IN THE

EXECUTIVE BRANCH. *there are other powerful*
IN ADDITION, ~~THE MOST POWERFUL MEANS TO~~

means for fighting FIGHT INFLATION! ARE ANTI-TRUST ACTIONS TO INCREASE COMPETITION,

ECONOMIC CONTROLS, CUTTING IMPORT RESTRICTIONS, INCREASING

TRADE, AND GOVERNMENT FISCAL AND MONETARY POLICY.

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L IMPOUNDMENT OUGHT NOT TO BE SUBSTITUTED FOR THESE WEAPONS
IN OUR FIGHT AGAINST INFLATION.

But THE PRESIDENT IS CORRECT WHEN HE NOTES THAT CONGRESS HAS
IN SOME INSTANCES PASSED CONTRADICTORY LAWS, ~~BUT~~ THE

WAY TO RESOLVE CONFLICTS OVER CONTRADICTORY LAWS IS NOT

TO TAKE UNILATERAL PRESIDENTIAL ACTION, BUT TO RETURN TO

THE CONGRESS AND ASK FOR A CLARIFICATION. THAT IS THE RESPON-

SIBLE WAY -- THE CONSTITUTIONAL WAY -- TO MAKE CHANGES IN

POLICY.

L BY POLICY IMPOUNDMENT, THE PRESIDENT ~~OF THE UNITED~~

~~STATES~~ IS VIOLATING THE COMITY THAT HAS SO CHARACTERIZED

EXECUTIVE-LEGISLATIVE RELATIONSHIPS FOR TWO HUNDRED YEARS.

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AND, DESPITE AN OCCASIONAL STATEMENT THAT THE PRESIDENT INDEED
WANTS ^{to} COOPERATION ~~an~~ WITH CONGRESS, HIS ATTITUDE AND ACTIONS
SPEAK DIFFERENTLY,

L INSTEAD OF HIDING BEHIND DUBIOUS CONSTITUTIONAL ARGUMENTS,
THE PRESIDENT AND HIS ADVISERS OUGHT TO LEVEL WITH THE
AMERICAN PEOPLE, AND TELL THE PEOPLE WHAT THEY ARE REALLY
UP TO AND WHAT THEY REALLY DO NOT LIKE.

L AND WHAT THEY DO NOT LIKE IS QUITE OBVIOUS; THEY DO
NOT LIKE THE FACT THAT CONGRESS HAS CHANGED AND CHALLENGED
THEIR PRIORITIES.

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CONGRESS HAS CUT DEFENSE, MILITARY PROCUREMENT, FOREIGN
AID, AND SPACE SPENDING / IT HAS INCREASED FUNDS FOR HOUSING,
COMMUNITY FACILITIES, WATER AND AIR POLLUTION, POVERTY
PROGRAMS, EDUCATION AND HEALTH CARE.

/ WHAT ARE THE REMEDIES TO PRESIDENTIAL IMPOUNDMENT?

CAN CONGRESS ASSERT ITS WILL?

/ FIRST, CONGRESS CAN AND HAS IN THE PAST ESTABLISHED

MINIMUM LEVELS OF WHAT MUST BE ACCOMPLISHED WITH APPROPRIATED

MONEY. / FOR EXAMPLE, IN THE FISCAL YEAR 1972 VETERANS ^{Administration} APPROPRIATION,

CONGRESS STIPULATED THAT THE FUNDS MUST PROVIDE NOT LESS

THAN AN AVERAGE OF 97,500 BEDS FOR VETERANS ADMINISTRATION

HOSPITALS THAT YEAR.

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L SECOND, CONGRESS CAN USE MANDATORY LANGUAGE SUCH AS
THE PRESIDENT IS "DIRECTED," "SHALL," "MUST," "REQUIRED,"
OR "ORDERED" TO SPEND APPROPRIATED FUNDS. L CONGRESS HAS
DONE SO BEFORE, SUCH AS IN THE 1970 CONTINUING RESOLUTION
FOR EDUCATION FUNDS.

L CONGRESS, UNDERSTANDABLY, HAS BEEN RELUCTANT TO USE
SUCH LANGUAGE BECAUSE IT RECOGNIZES THAT CONDITIONS DO
CHANGE --THAT CHANGES MIGHT BE NECESSARY IN THE SPENDING
OF FUNDS. L BUT, UNTIL THE NIXON ADMINISTRATION CAME INTO
OFFICE, CONGRESS AND THE PRESIDENT HAVE ALWAYS HAD A
RELATIONSHIP THAT WAS INFORMAL BUT CLEARLY UNDERSTOOD
ON THE USE OF FUNDS.

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THAT COMITY NO LONGER EXISTS, ~~PERHAPS~~ MANDATORY LANGUAGE
WILL HAVE TO BECOME STANDARD IN ALL APPROPRIATION BILLS
SO THAT THE PRESIDENT WILL CLEARLY FOLLOW AND EXECUTE
THE LAW,
L ~~THIRD,~~ CONGRESS CAN ESTABLISH IMPOUNDMENT PROCEDURES
TO AFFIRM OR REJECT ANY FUND WITHHOLDING, LEGISLATION
PRESENTLY BEFORE THE SUBCOMMITTEE ON SEPARATION OF POWERS
WOULD REQUIRE CONGRESS TO AFFIRM THE LEGALITY OF ANY PROPOSED
IMPOUNDMENT, OTHERWISE THE PRESIDENT WOULD BE DIRECTED
TO SPEND THE FUNDS.

*Min
case
DISASTER
FUNDS*

FOURTH, CONGRESS COULD GO -- AND SOME MEMBERS OF THE
SENATE AND I HAVE GONE -- ONE TO COURT TO FORCE THE PRESIDENT
TO USE THE APPROPRIATED FUNDS. THE COURTS HAVE BEEN RELUCTANT
TO ENTER THIS THICKET OF CONGRESSIONAL-EXECUTIVE CONFRONTATION.

BUT IT IS MY JUDGMENT THAT THEY CAN NO LONGER STAND BACK,

THE COURTS WILL HAVE TO MAKE A DECISION ON THE IMPOUNDMENT
QUESTION.

FINALLY, THERE MUST BE CONTINUED POLITICAL PRESSURE
ON THE ADMINISTRATION. THE ADMINISTRATION HAS A PRACTICE OF
HOLDING BACK MONEY AFTER AN ELECTION, ONLY TO RELEASE IT
BEFORE THE NEXT ELECTION.

V.A. Benefits

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THE AMERICAN PEOPLE MUST MOUNT THE SAME KIND OF SUSTAINED
POLITICAL CAMPAIGN THAT FORCED THE PRESIDENT IN 1970 TO
RELEASE EDUCATION FUNDS AND IN 1972 TO RELEASE FOOD STAMPS
MONEY. PUBLIC OPINION IS A POWERFUL FORCE, EVEN ON A STUBBORN
PRESIDENT.

HOW WILL THIS CONSTITUTIONAL CRISIS BE RESOLVED?

I WOULD BE LESS THAN CANDID IF I SAID I KNEW THE ANSWER.

I DO KNOW THAT THE CRISIS IS SERIOUS.

AND, OF ONE MORE THING I AM CERTAIN. THE PRESIDENT'S VISION
OF AMERICA EVIDENCED IN HIS ILLEGAL IMPOUNDMENTS AND HIS
RECENTLY RELEASED BUDGET, IS NOT THE VISION OF AMERICA THAT
I SEE.

THE PRESIDENT CLAIMS HE KNOWS AMERICA -- AND AMERICANS. HE
SEES THE SELF-MADE MAN, THE SELF-SUFFICIENT, THE FREE MARKET,
AND THE VIRTUES OF PRIVATE ENTERPRISE.

SURELY THAT IS PART OF AMERICA, BUT IT IS NOT ALL OF
AMERICA.

THERE IS A SECOND AMERICA.

THERE IS AN AMERICA OF COMPASSION FOR ITS POOR, ITS HUNGRY,
AND ITS SICK.

THERE IS AN AMERICA OF DEVOTION TO HELPING OTHERS HELP
THEMSELVES.

THERE IS AN AMERICA OF GREAT WEALTH, CAPABLE OF GREAT
DEEDS, IF ONLY CALLED TO DO SO.

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THERE IS AN AMERICA THAT IS NO LONGER CONTENT TO BE
PUBLICLY POOR AND PRIVATELY RICH.

THIS IS AN AMERICA NOT FOUND IN THE NIXON BUDGET NOR
WELL SERVED BY A DEEPENING CONSTITUTIONAL CRISIS
PRECIPITATED BY IMPOUNDMENT.

WHAT AMERICA IS REALLY ALL ABOUT WAS WELL PHRASED
IN FRANKLIN DELANO ROOSEVELT'S 1937 INAUGURAL ADDRESS.
LOOKING OUT ON A NATION HE DESCRIBED AS ONE THIRD
ILL-HOUSED, ILL-CLAD, ILL-NOURISHED, HE SAID:

"THE TEST OF OUR PROGRESS IS NOT WHETHER WE
ADD TO THE ABUNDANCE OF THOSE WHO HAVE MUCH; IT
IS WHETHER WE PROVIDE ENOUGH FOR THOSE WHO HAVE TOO
LITTLE."

THIS IS AN AMERICA RICHARD NIXON DOES NOT KNOW OR
UNDERSTAND.

FOR RICHARD NIXON, AMERICA IS IN RETREAT. IT IS AN
AMERICA PRACTISING DOMESTIC DISENGAGEMENT, RETRENCHING --
NOT TO FIGHT AGAIN BUT TO ABANDON THE CAUSE OF CONQUERING
OUR ILLS AND ENRICHING THE LIVES OF MANKIND.

IT IS NOT MY VISION OF AMERICA.

MY VISION OF AMERICA IS FOUND IN THE WORDS OF
CARL SANDBERG:

"I SEE AMERICA, NOT IN THE SETTING SUN OF
A BLACK NIGHT OF DESPAIR AHEAD OF US. I SEE
AMERICA IN THE CRIMSON LIGHT OF A RISING SUN FRESH
FROM THE BURNING, CREATIVE HAND OF GOD. I SEE GREAT
DAYS AHEAD, GREAT DAYS POSSIBLE TO MEN AND WOMEN
OF WILL AND VISION. . . "



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