

THE WHITE HOUSE

WASHINGTON


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May 23, 1970

MEMORANDUM FOR:

✓ Bryce Harlow
John Ehrlichman
H. R. Haldeman
William Timmons
Henry Kissinger

FROM:

Tom Charles Huston 

SUBJECT:

The Assault on the Constitutional Powers
of the Presidency

While we have every reason to be concerned with the tactical attack upon the Commander-in-Chief powers of the President being waged in the Senate via the Church-Cooper Amendment, I believe we should be aware of the long-term strategic implications of the effort being waged in the arena of informed opinion to undermine the legitimacy of Presidential initiative in the conduct of foreign relations.

We are in the midst of a historic assault upon the constitutional powers of the Presidency, and unless we meet this assault directly and rebuff it, we will have presided over a constitutional revolution.

For the first time since 1940, the vocal intellectual establishment is united in opposition not merely to American involvement in foreign wars, but to the institutionalized power of the President to conduct the foreign relations of the United States. During the Bricker Amendment debate, for example, the intellectual establishment was in the vanguard of those defending the freedom of action of the President. This situation has been reversed, and its implications are far more important than any tactical political considerations involved in the current debate on the Cambodian amendments.

On May 13, 19, and 20, legal memoranda challenging the constitutional powers of the Presidency were placed in the Record. These memoranda are scholarly, largely-dispassionate, and superficially persuasive.

More important than their content, however, is their symbolic value. They suggest that learned opinion in this country is virtually unanimous that Presidents have been usurping the power of Congress. The fact that they go largely unchallenged suggests that the weight of constitutional argument, historical precedent, and common sense supports their conclusion.

I recognize that it is difficult when under the heavy pressure of daily problems to take time to consider the long-term implications of events which appear to be only tactical maneuvers. However, we will make a momentous mistake -- the ramifications of which will extend far beyond the Nixon Presidency -- if we fail to recognize that what we are witnessing is not a limited revolt against Cambodia, it is a major revolution against the foreign policy powers of the Presidency.

Ideas have consequences. The cascade of constitutional arguments being mustered against us at this time may not influence a single vote in the Congress, but it will influence the thinking of those who formulate the intellectual framework within which practical politicians maneuver. Ideas always precede events, and few men of action are perceptive enough to recognize the potential limitations which will be placed on tomorrow's actions by today's ideas.

Each day the maneuvering room of the President is being circumscribed, not by the rantings of Fulbright, but by the arguments of intellectuals which reinforce a prevailing mood of weariness which has overcome the American people as a result of this war. The President can still rally the people by powerful leadership and stirring rhetoric, but he may not be able to do so much longer, for he is in danger of having the constitutional legitimacy of his role as Commander-in-Chief cut out from under him. If the American people can be convinced that the President is a usurper, that he is violating the Constitution as well as offending the sensibilities of opinion formulators, the moral foundation of the Presidency will be effectively destroyed.

Those who believe that Presidents can always do what they wish in foreign policy without regard to the opinions of Congress and the people should take a look at the experience of Franklin Roosevelt from the adoption of the First Neutrality Act in 1935 to the attack on Pearl Harbor in 1941. It can happen again, and the consequences could be fatal.

Tactically on the floor of the Senate we are doing rather well, considering the advantage the opposition has in terms of support from the academic community and the media. We may even win a tactical battle on the Church-Cooper Amendment by finding grounds for a suitable political compromise designed to avoid the President from embarrassment, but we will surely lose the strategic war unless we begin to mobilize a broad-based campaign which includes intellectuals, constitutional lawyers, and anyone else we can recruit to join in a spirited and effective defense of the powers of the Presidency as they have evolved since World War II.

I am impressed with the effort which Gene Cowen and the other Congressional relations people are making to assist our forces on the Hill. Were this only a Congressional struggle, I would be less concerned. However, I believe the issue is broader than a restrictive Cambodian amendment, and the Administration's defense effort must correspondingly be broader.

I would suggest that consideration be given to establishing a White House working group to develop a game-plan for dealing with this problem in its total implications. Included in such an effort should be John Layman and Sven Kraemer from the NSC, Gene Cowen, Chuch Colson and Jeb Magruder. We need to recruit the support of the ABA and the academic community, get our message out to the writing press and the scholarly journals, insure that our Senators have the latest information and arguments, and guarantee that the total resources of the government are being mobilized and coordinated.

I may be wrong about the strategic implications of the current political and intellectual offensive, but when a new edition of Woodrow Wilson's Congressional Government appears in the window of the Globe Bookshop, I'm going to suspect that we misread the temper of our times.