

Beyond Politics?

*The Political Development of Presidential Signing Statements in
Historical Context*

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TABLE OF CONTENTS

Introduction	1
Section One: <i>Only Good Feelings?</i>	9
Section Two: <i>Intercalary: Bridging the Gap</i>	37
Section Three: <i>The Power of the Executive to Shape the Law</i>	55
Conclusion	81
Appendix	87
Bibliography	97

Introduction

“The executive branch shall construe Title X in Division A of the Act, relating to detainees, in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power, which will assist in achieving the shared objective of the Congress and the President, evidenced in Title X, of protecting the American people from further terrorist attacks.” – George W. Bush, December 30, 2005

It was this paragraph of President George W. Bush’s signing statement on the Detainee Treatment Act of 2005 that truly began to draw national attention to the power of the presidential signing statement. The clause in question, Title X, disallows the “cruel, inhuman, or degrading treatment or punishment” of detainees held as a result of the “War on Terror” at Guantanamo Bay, Cuba. [1] Bush signed the act into law, but later that day would issue a message including the previously quoted paragraph.

The statement itself is fairly wordy and to the laymen is full of bureaucratic jargon. But as politicians, journalists, and legal scholars examined the meaning behind such phrases such as to “supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power”, and while Bush administration officials sought to explain the language, it appeared to many that the Bush administration was attempting to make an end run around the legislative prohibition on torture he had just signed. Administration officials argued the president’s power as the Commander in Chief meant that he alone had jurisdiction over the treatment of men considered “military combatants” in a “War on Terror”; additionally, in order to be effective, the executive branch must operate uniformly under the direction of the president and not the Congress or the Courts, hence the “unitary executive.” These assertions, and further prodding and investigation by the political and academic figures incensed at the notion that duly passed and endorsed legislation could receive such wide interpretation by the executive, generated a maelstrom of controversy in the lame duck years of the Bush administration. The Boston Globe’s Charlie Savage meticulously detailed how the administration used such statements and even devoted an entire chapter of his book to the issue. Such attention was garnered to the point where it even became a presidential campaign issue in 2008 complete with candidate positions on the issue. Senator John McCain, who clearly had a specific prejudice against such statements, vowed never to use them. Senator Obama, a former constitutional law professor at the University of Chicago, insisted that though these statements did have a proper role, he would never abuse them in the manner that the Bush administration had.

Meanwhile, the academic argument over the legitimacy of such statements would flourish. Seemingly countless numbers of law review articles have been written on the topic, and many symposiums questioning the legitimacy of signing statements and proper usage were held. The venerable American Bar Association would even commission a comprehensive report on the history, role, and legality of such executive declarations. In the minds of many of these legal scholars, the history and legitimacy of signing statements were deeply connected. Nearly every review article starts with what might be politely referred to as a casual history of signing statements either for or against signing statement usage. Legal scholars saw these examples a sort of precedent in their legal argument: one might assert that because James Monroe, Andrew Jackson, James K. Polk, Abraham Lincoln, Theodore Roosevelt, Franklin D. Roosevelt, Ronald Reagan, George H.W. Bush, and William Jefferson Clinton had used such statements, a clear

historical foundation for the mechanism existed. Other scholars would counter by noting that the historical cases used were slightly different than those of the George W. Bush administration, and would go on to note other historical examples that asserted legislative supremacy or the limited choices of the chief executive when a piece of legislation came to the president's desk. I do not know how such arguments will resolve themselves, but throughout my reading of this academic debate I became frustrated with what I earlier referred to as casual, or more forthrightly, abusive nature in which these writers used history. Merely citing historical examples and pretending that such incidents seamlessly mapped on to modern day example is convenient but not necessarily believable. The converse of this is also true. Claiming that there is no similarity eschews two centuries of executive-legislative relationships; surely there must be some element or characteristic that is common. What seemed to be lost in this debate was historical detail. Of course these statements have existed in the past, but why? In answering such a question, I do not hope to solve the legal argument, but rather aim to contribute to a further understanding of the nature of signing statements and their origins. Despite the numerous questions at stake, queries such as "Why do they exist?" and "How have they changed?" have gone without any explanation. To answer these questions completely and comprehensively is the work of books, but I do hope to illuminate particular conditions and historical moments that contributed to the contemporary usage of and debate surrounding signing statements. These occasions for comparison and contrast are often lost or out-rightly ignored in the existing literature. Legal and political scholars have attempted to carve out intricacies in the statements and institutional structures that have even the smallest bit of ground for historical comparison. Little attention has been paid to both larger and smaller conflicts between the executive and legislative branches whose details influenced statements or of which the statements were an important element. Signing statements are now recognized as an important study, but little attention has actually been paid to a given statement in historical context, which is critical to understanding the use of a statement in a given period, as well as its continued development. In seeking to contribute towards a better understanding of these questions, it became clear that the best perspective for my approach was that of political development: how are longer term trends explained by circumstances contemporary to the situation? I find the argument, for example, that the Bush administration simply issued signing statements with the sole purpose of weakening the legislative and judicial branches fairly disingenuous. Few serious scholars make this argument about Franklin D. Roosevelt's efforts to change the composition of the Supreme Court in his favor; there is always a policy or political objective that is better accomplished by such movements. For Bush, he was fearful of how such limits on prisoner treatment might inhibit his ability to protect the nation from terrorist attacks; FDR believed that his New Deal programs needed implementation for the welfare of the nation's economy and the Court had impeded these measures. Few legal scholars or political scientists have examined the ground view, contemporary political context of these signing statements and the surrounding conditions. To truly understand the nature of signing statements, one needs to examine phenomenon that may at first only seem to be tangentially related. Part of my argument and approach to understanding the conditions that have led to the use of signing statements is founded on the assertion that the larger political narratives will help understand the relatively smaller concept of signing statements, a perspective absent in much of the current debate. As history turned its attention to other matters, political scientists have sought to fill this vacuum, seeking to explain political phenomena from a historical standpoint. Though "signing statements" may not appear

in the index of any of Keith Whittington's or Steven Skrwonek's works, their contextual detailing of political development show great promise for my interest. Additionally, many of these works highlight broad battles and trends that signing statements are either an element of, or signify a parallel battle. Make no mistake about it though, I believe this thesis to be a work of history. I examine in depth two historical moments of signing statements and detail the political circumstances surrounding their usage. In providing such details, I hope to contribute to a more thorough historical explanation of political maneuvers, rather than the "law office" abuse of casually citing historical.

When questioning any number of academics or legal scholars, it is likely that a mild acquaintance with signing statements will exist. The controversy surrounding the George W. Bush administration's use of the statements, most notably in seeking to nullify the McCain anti-torture bill, has certainly raised the profile of said statements in the eyes of political and legal observers. However, this new interest in the statements as a modern political phenomenon of questionable legality has not been of great interest to historians. Much of signing statement literature is dominated by scholars who seek absolute and outright definitive answers, and, in their quest for answers to these modern concerns, do not necessarily recognize the origin of these questions, whether or not such problems are new, and whether history can offer any sort of backdrop or explanation as to the nature of the statements or the concerns surrounding them.

That is not to say that the scholarship ignores history, rather it often finds a historical citation as an easy, convenient way to build any given argument on either side of the issue. However when works employ this tactic, they do not give the historical examples thorough scrutiny, seeking to identify other issues, personalities, and conditions that might explain why a given development occurred. In failing to do so, these works abuse history and do not do the discipline justice. This negligence, which became painstakingly clear to me only in a comprehensive examination of the existing scholarship, begs further inquiry into the origin and nature of signing statements, questions that present an opportunity for new historical study. I am indebted to the current scholarship. Were it not for the existing scholarship and primary literature on signing statements, I would not have been able to think critically and develop original questions. Likewise, were it not for broader works on political development in American state building, I would not have a larger context or a methodological framework for attempting to resolve the questions I outlined.

The work, in its first and third sections, examines two examples of presidential signing statement usage in a fair amount of detail. These two historical moments, James Monroe's "Special Messages" to Congress and the later work of the Attorney General in the Reagan Administration represent what I have identified to be the "birth" and "re-birth" of signing statements as an executive branch tool. The intervening section is of a different, more intercalary nature, broadly explaining the development of signing statements in the vast intermittent period. Unfortunately, the nature of this project prevents me from comprehensively explaining the intervening period, and my work in it is heavily indebted to scholars in the political development field, as is much of my general approach in the sections on either end of the thesis. It is my hope that however small, the reader will after having read this work of history, be further spurred on to questions of "how?" and "why?" modern political phenomena exist desire to explore how they are related both to the contemporary political context as well as the political developments of the past.

Section I

Only Good Feelings?

Initial consideration of James Monroe's "Special Message to Congress" of January 17th, 1822 reveals little cause for remark.^[2] In and of itself, this written correspondence to Congress is devoid of political rhetoric and theatrics, makes no unseemly claims, and appears to be a simple memorandum communicating military personnel appointments. Though a future president is mentioned in the document, the transfer of Lieutenant Colonel Zachary Taylor between units can hardly be recognized as a seminal moment in American military history. The same might also be said of the appointments made to Paymaster General, the Adjutant General, and the leadership of several artillery brigades.

Consideration of a mild toned administrative document is fitting for the general narrative that has been constructed to characterize this era. 1822 was a year of relative peace and tranquility in the United States, a time that would be known even by its contemporaries as the "Era of Good Feelings". Monroe's "Special Message" was written in response to a draw down of the military by Congress, itself an action literally indicative of the nation's sense of security. The British threat had finally been put to rest, the French menace removed after the Louisiana Purchase, the Spanish empire was waning, and even internal threats were discounted, as Andrew Jackson had vanquished the Seminoles. The American state seemed to have finally secured its position in the New World, though the nation was in no mood to make bold moves: the Monroe Doctrine's assertion of hemispherical interest and hegemony, would not be issued until 1823.

Historical scholarship, in its lack of attentiveness to this time, has judged the era to be relatively uninteresting politically as well. Volumes on Monroe's predecessors fill entire libraries; Andrew Jackson, one administration removed in succession to Monroe, is universally recognized as one of the most influential and transformative presidents in the nation's history. Perhaps it was because Monroe was the youngest and last of the founding dynasty that had guided the American state from 1776 onwards and, with the exception of Washington, had the least tenuous and divisive administration. He was unopposed in his first electoral run, and the cabinet composition suggests a new, national spirit after years of Northern Federalist-Southern Democratic battles. Nearly every former division and political stripe was represented, the notables being John Quincy Adams, as Secretary of State, the son of a Federalist president and the very image of a New Englander, and John C. Calhoun, an ardent state's rights supporter and apotheosis of the Southern politician as Secretary of War.

Monroe's reelection effort is just as telling. When running for reelection in 1820 Monroe did not face a bona fide opponent and nearly swept the Electoral College. The Federalists had collapsed, and the Democratic Republicans had yet to be split by the regional and personality cleavages that would define American politics in the antebellum period. Monroe was convinced that the government of the nation could be accomplished and perpetuated by a group of "Republican saints", men committed to good governance whose disputes could be resolved amicably. Henry Clay had yet to reach his political zenith, and Calhoun was still years removed from establishing his place at the forefront of the nullification debate. Daniel Webster was still a state legislator.

One can certainly be forgiven then if he sees this time, and certainly this supposedly “Special” correspondence as thoroughly unremarkable. Even Monroe biographers pay little attention to his eight years as president, choosing instead to focus on Monroe’s role in the nation’s founding and his relationship with the other founders. But such broad characterizations of this era, though accurate in general impression, should always be reexamined, and in doing so the contours and wrinkles of the era become decidedly more pronounced. This is even true of the seemingly nondescript nature of the January 17, 1822 message to Congress. Why was a seemingly unremarkable document concerning military administration not initially published in the public record? Why did the Senate conduct a full blown, secret investigation complete with affidavits and depositions? Such actions are certainly not indicative of an “Era of Good Feelings” and the words leveled at Monroe by Congress do suggest a spirit of goodwill.

The chronology of events was such as this: the Congress passed a bill drawing down the size of the military, both in terms of combative and administrative personnel, Monroe signed the bill, but later noted his objections and attempts at reconciliation with the legislative priorities in the form of a “Special Message.” After receiving this message, which was sent some months after the passage and initial endorsement, members of the Senate took offense at Monroe’s message, which they interpreted to be a subversion of law by the executive branch. The Senate went into closed session and sternly rebuked the president on the chamber floor after the Military Affairs’ committee’s report charged Monroe with attempting to subvert the law. After hearing the report, and giving literal voice to its objections, the Senate actively did so in the form of a vote by rejecting the military appointments that Monroe had sent for their consent. This action was taken despite the president’s assertions that he found the law to be inconsistent with both the Constitution and what he considered to be the spirit of the original legislation.

With these events and actions in mind, much divergence to the accepted narrative of the era exists, reminding one that generalizations are not completely descriptive or accurate. This brief chronology, while accurate, does not fully describe the tensions that existed between the competing political branches of the government. The primary focus of this following chapter will be on the actions and motivations of political actors in respect to what academia has identified as the first of presidential “signing statements.”^[3] In doing so, though, one also learns more about the nuances of the supposed “Era of Good Feelings” and the early history of executive and legislative branch relations, specifically, the tension created by a battle over administrative control of the military.

“In reconciling conflicting claims...” Monroe’s Special Message in contemporary context

Until the 20th century, many Americans saw the idea of a large standing army as a threat to liberty. The Constitution itself describes the need for a “well regulated militia”, but the not so distant memory of red-coated troops arriving in Boston Harbor made any discussion of regular, professional forces a rather delicate subject. Such a symbol of tyranny, in the eyes of statesman and laymen alike, had no place in this new experiment of an independent American nation. After a series of military conflicts had necessitated an increase in quantity of forces available, the Army was quickly drawn down in its size. In 1815, Congress had passed and President Madison

had signed a bill that reduced the nation's forces to a level comparable with that which had preceded the War of 1812. Though the overall focus was decrease, the measure had strengthened the military regulars at the expense of the militia system that represented the spirit of '76 to many. After General Andrew Jackson had eliminated the Seminole threat and regional unrest in Florida, the Congress drew up another bill specifically mandating a vast reduction of forces, especially in the regular officer corps.

The legislators did so primarily for the reason outlined earlier and with the knowledge that such a reduction had been made after the 1812 conflict. The officers who made up a significant portion of the standing army were specifically targeted because they represented career soldiers, a group of men that were almost anathema to those men who recalled, or had even been apart of, the voluntary composition of forces that had defeated the British regulars in the Revolutionary War. Rather, the men of the Congress thought that the nation's armed forces should be composed of men who were citizen patriots, who were anxious to return to private life, just as the nation's first soldier, General Washington, had done. The veterans certainly deserved the thanks of a grateful nation for their service, but not a permanent position in the U.S. Army.

It seemed that Andrew Jackson had a similar desire in that he initially intimated to friends, President Monroe among them, that he was anxious to retire from public service and return to his residence in Tennessee.^[4] But the situation in Florida required further attention and Jackson acquiesced to Monroe's request that he stay on as military governor of the new territory. This is a particularly surprising move by Monroe because several of Jackson's actions in the administration of the conflict with the Seminole Indians had not exactly inspired the executive's confidence, and might explain the Congress's general suspicion of the officer corps.

In 1818 Secretary of War John C. Calhoun wrote Jackson with specific orders pertaining to his purpose and mission, which was to force Seminole raiding parties back across the border of the United States into Spanish controlled Florida without crossing the boundary. Jackson endorsed this broad license in correspondence with President Monroe to take action to protect American citizens but, showing a certain savvy for the geopolitical situation and future American interests wrote that "... the sole possession of the Floridas would be desirable to the United States and in sixty days it will be accomplished."^[5] Jackson understood that such a cross border incursion would be difficult to justify, and that even were it successful, the crossing might be embarrassing politically for the Administration; the President could have been seen as having endorsed a course of action that was an Act of War without the requisite declaration from Congress. Ever the master strategist, Jackson did not just have an objective, he had a plan and a rationale as well.

Just before he promised Florida to the administration Jackson noted that any such communication approving his plan ought to be "signified... through any channel", ^[6] implying that a normal, traceable communiqué might not be desirable in the face of outside scrutiny. Jackson additionally outlined strategic reasons for why he might need to invade Florida, citing the need for decisive action to ensure the victory and security of the American forces. What if the Americans did prove successful and chase the Seminoles out of Florida, but before achieving complete victory had to stop at the border and await the government's instructions? Jackson's answer: "Defeat and Massacre." ^[7] Beyond the military necessity, Jackson made a principled case. Though the War of 1812 had clearly delineated the situation in the Canadian border regions, the British, Spanish, and other "continental" forces still had a toehold in Florida and were no doubt, according to Jackson encouraging the Seminole raiders. With an air of

indignation Jackson asserts that “The whole of East Florida [should be] seized and held as an indemnity for the outrages of Spain upon the property of our citizens. This done, it puts all opposition down...” [8] Florida was not merely a potential asset to Jackson, it was the key to American security and an opportunity for American vengeance.

Jackson received no reply from Monroe and it is unclear as to whether the president read the correspondence. Monroe would later explain that he had received the letter during a bout of illness and was unable to concentrate on its contents, but that instead he had handed Jackson’s letter to Secretary of War Calhoun during a visit, who made no substantial remarks after reading it. [9] Jackson had a markedly different, more intriguing explanation. Though he had not received any direct reply from the president, Jackson would explain that he had received a reply by one of the back channels he had suggested. Congressman John B. Rhea of Jackson’s home state of Tennessee, in Jackson’s story, been shown the letter by Monroe and asked to reply on the president’s behalf, along with the request the Jackson burn it after reading. Jackson, ever the man of honor and trust, naturally acquiesced to these wishes and thus conveniently could not produce the letter that demonstrated Monroe’s assent to his recommendation that he be allowed to cross into Florida.

These varying explanations were composed after Congressman Henry Clay brought forward a resolution in 1819 censuring Jackson in the House of Representatives after his victory in Florida, perhaps the earliest indication of the suspicion that would bring about the later attempts of the legislative body to reduce the officer corps. Having received his supposed approval, or merely wishing to seize the moment, Jackson had gone on to take control of formerly Spanish possessions in Florida, a bold strike against the hated European powers that would win him the acclamation of his countrymen from North to South. In large part due to this popularity, the censure resolution would not come close to passing the House. Clay saw this failure to condemn Jackson as the “triumph of the military over civil”. [10] Objections to Jackson’s action were not limited to the legislative branch and it is worth noting the general consensus of Monroe’s cabinet, which condemned Jackson’s actions almost unanimously.

This was not the only brush up that Jackson had had with Monroe’s administration and Secretary of War Calhoun specifically. One year earlier Calhoun had issued direct reassignment orders to an engineer under Jackson’s command without notifying the general. When finding out about this bypass in the chain of command, Jackson insisted that his subordinate officers pay no heed to War Department orders if they did not come from Jackson himself. Jackson feared an administration impeding the successful prosecution of his military efforts, the success of which would ultimately lead to his incredible popularity among the American populace. Members of Monroe’s cabinet and the Congress saw a firebrand general who would forego direct orders in order to foment his own popular standing, an ascension that threatened members own political aspirations. [11]

The move against Spanish Florida was not to be the last controversy either. Even more controversial than Jackson’s pursuit of the Seminoles over the established boundary line into Spanish controlled East Florida, was his role as judge, jury, and executioner in the case of two British agents that were arrested after the American incursion. Alexander Arbuthnot and Richard Armbrister were British traders who had been conducting commercial affairs for some time in the territory. Accused of encouraging, and even coordinating the Seminole raids on American settlers, these men were easy scapegoats for Jackson in his disdain for the European powers’ toehold in the New World. Captured by Jackson’s forces, the general held them until the

cessation of hostilities before convening a Court Martial solely on his own authority. The trial lasted three days during which witnesses were heard and the defendants were allowed to make a case, though other elements of formal court procedure were absent. The court found Arbuthnot and Armbrister to be guilty. On his return to Nashville, Jackson ordered that Arbuthnot be hung in lieu of the prison sentence delivered by the court that he deemed impracticable, and that Armbrister be shot. The summary trial and execution of two British nationals nearly provoked a large scale international incident, but Britain settled for a mere diplomatic protest, lest the supply of raw cotton to English factories be interrupted or even cut off.

Legislative Action and Perspective

Though Congress did not vote to censure Jackson for his unilateral attack and meting out of military justice, several years later the body did seem to vote him out of office, or at least eliminate the high profile that he had acquired as a Major General. The Act “To reduce and fix the Military Establishment of the United States” of March 2nd 1821 called for a mass reduction in the officer corps and reassignment of responsibilities to lower officer grades. It also shifted the conflict over military administration from a military-civilian axis to that of an executive-legislative battle.

The Congress’s initial intent for the legislation was that power be diminished at the expense of the military, not the executive branch. After Jackson had so clearly thumbed his nose at his superiors and, in the eyes of many legislators, attempted to build a cult of loyalty within his officer corps, many politician’s minds turned to the classical history of Caesar’s tactics and feared that Jackson could potentially head a military coup.[\[12\]](#) This is certainly reflected in the provisions of the legislation that would pass both houses and receive the president’s endorsement. The legislation mandated that there be one major general, when two existed at the time of its creation. One would have to go and it may very well have been Jackson. To Jackson’s good fortune, President Monroe had already requested that he forego his desires to return to his private life in Tennessee and remain as Governor of Florida. [\[13\]](#) Jackson agreed but the effect of the Act was not lost on the president, who would later note the legislation’s unfortunate provisions in his first “Special Message” on the topic, nor was it lost on members of Congress, who would comment on Act’s effects in the floor debate, before and after passage.

To reiterate, the Congress saw historical justification for the Act mandating a reduction in forces in the Reorganization Act of 1815 that was passed following the conclusion of the War of 1812. The 1815 Act had been the first comprehensive reduction of the military since the end of the Revolutionary War and was designed to respond to the flaws that the unexpected conflict had exposed, but also made sweeping changes in personnel upon which the later 1821 act would build. Among these changes was the reduction of the number of major generals from six in the wartime army to two in the peace-time standing force, one for the Northern Division of the Army and one for the Southern.[\[14\]](#) Jackson, at this time already famed as the Defender of New Orleans, was given command of the Southern Division.[\[15\]](#) After the Seminole War, that had cooled any lingering fears of conflict, and the reorganization legislation of 1821, this number was further reduced to one major general, and Jackson assumed the governorship of Florida.

The Legislative History and Intent

A further examination, beyond the words and statutory provisions of the bill, must be undertaken in order to fully understand the legislative history, context, and intended effects of

the Congress in the 1821 military reorganization. Accounts of the floor debates provide perhaps the best perspective in to the legislative history of the Act and an understanding of the context of Monroe's signing statement. In detailing the legislative timeline, one can simultaneously capture contextual peculiarities of the debate in each house.

On November 20th, 1820, Mr. Cocke, a House member of Tennessee rose and submitted a resolution that was immediately and unanimously approved which read:

“Resolved, That the Committee on the Military Establishment be instructed to inquire into the expediency of reducing the Military Peace Establishment of the United States” [16]

The Committee would later report legislation that called for a reduction of the Army to six thousand non commissioned members and a reduction in the officer corps, specifically in the number of brigadier generals, but there was certainly an implication that cuts would be made to the number of major generals as well, and that specifically Jackson would be targeted. This became apparent in the debate that ensued after the reporting of the Military Affairs Committee's bill before the House on January 8th 1821. Speaking against such widespread reductions of the nation's defenders, Representative Simkins of South Carolina made note of the continued value that these men had claiming that, though it may be easy to “dismiss from the service, Jackson, Brown, Scott, Gaines and others...” such action would be greatly weaken the strength of the Army. [17] After such valorous service, it would be unfitting for these men to take a reduction in rank, importance, and responsibility, let alone dismissal.

Counter arguments centered on the perilous state of the nation's finances, that the current number of officers was no longer necessary, and the assertion that Jackson seemed to be doing quite well in private life, tending to his estate in Nashville. Along these lines, Congressman Williams of North Carolina argued that the current arrangement of the Army seemed to have been made less with the good of the country in mind, and more with the welfare of Andrew Jackson. Williams would further denote Jackson's volatility and insubordination to the War Department and characterized the attitude of the Monroe administration towards Jackson as one of “accommodation.” [18] This attitude was the consensus of the chamber. Despite Simkin's and other's strenuous objections, and an attempt to recommit the bill to the committee with instructions, a third reading was made on January 23rd. With relatively little debate following, the measure passed the House by a tally of 109 yeas to 48 nays. The bill left the House without a provision for reducing the number of Major Generals, but the Senate was certain to offer its own amendments.

The following day the bill was reported to the Senate and referred to the Committee on Military Affairs. Several amendments were added to the House bill in committee and Senator John Williams of Tennessee gave a full report on the necessity of such measures on February 21st. Among these amendments was a further overhaul of the general staff of the staff of the army that had been forecasted by Congressman Simkins, specifically the reduction in the number of generals and reassignment of responsibility, which constituted sections 4 and 5 of the final measure. Particularly, the previous organization of the army into two departments, a northern and southern division under respective major generals, was consolidated into one department with one major general. The bill was returned to the House for its consideration and concurrence.

Initially an amendment was proposed in the House to strike out the Senate committee's provision for the reduction in number of major generals and there was “extensive” debate. [19] The vote on this measure was much closer than the vote on the bill as a whole, and the lower chamber voted in favor of maintaining the Senate's amendment, in part due to the belief that

rejection of the specific measure would jeopardize the bill as a whole, as argued by Henry Clay. But even in this vote there is evidence of the growing personality cult of Jackson, as the House nearly rejected a measure that would have eliminated Jackson's position in the Army, for fear of public reaction. This link is evident in Jackson's correspondence with his friends in Congress, such as Congressman Rhea as well as in the remarks of Congressman Simkins, who took the opportunity to once again decry the dismissal of talented officers. On the other side of the debate, other members went so far as to accuse the military establishment of having infiltrated the legislative body of the people, which, according to the debate record, cited Jackson numerous times. Though the legislative body on the whole voted against Jackson, evidence of growing divisions is certainly present.

The record of the debate in the Senate on the revised measure is more thorough and exhaustive and suggests a more general suspicion than the House record. It is in reading this debate that one begins to understand the full sense of suspicion on the part of many legislators toward the Army. Senator Mahlon Dickerson forecasted that, were it not fiscally necessary to reduce the army's size, the Army would never decrease in times of peace and would continue to acquire numbers and power constituting a grave threat to liberty. Dickerson would further note the grave lack of attention that ordinary Americans and the press were paying to the current size of the Army, and expressed his fear that the historical suspicion of the American populace towards standing armies was no more. [20] A series of amendments were brought forward by members and considered in addition to those already proposed by the Committee on Military Affairs, but none were successful. Monroe affixed his signature to the measure on March 2nd, 1821. [21]

Throughout this debate it is clear that the end of the conflict with the Seminoles, the securing of Florida, and the nation's debt were the key conditions that precipitated in the proposal of the legislation. After each substantial conflict in the history of the young American state, most notably the War of 1812, similar actions were taken. But by no means do these rationales preclude the consideration of Andrew Jackson's conduct as an important factor between both proponents and opponents of the military reduction. Was Jackson an indispensable general, who had delivered the nation from the hands of the British and protected further protected it from the attacks of the Seminoles? Or was he an overzealous, firebrand, whose ambition resembled that of a rising tyrant? These were certainly open questions in the minds of many American statesmen in 1821 and though Jackson's conduct was not the centerpiece issue of this legislation, it certainly was paramount in the consideration of the bill and key to understanding the contemporary political context of the actors' actions.

The Administration's Reaction, the Congress's Response

Despite the fact that Monroe had found a place for Jackson to continue his service, that did not keep him from registering his objections to the legislation after endorsing it. It is these dichotomous elements of endorsement and objection by which historical and legal scholarship has identified his "Special Message" of January 17, 1822 as a "signing statement". In this message, directed to the Senate, the body responsible for the provisions of the bill that Monroe found objectionable as well as for the confirmation of military appointments, Monroe outlines how he found it difficult to execute the reorganization of the army and the reassignment of officers mandated by the act that he had signed. In the same statement, Monroe further nominates several officers to new positions due to retirement and attrition. Though no specific

mention of Jackson is made, Monroe does write of the degrading imposed on several officers claiming that “In reconciling conflicting claims provision for four officers of distinction could only be made in grades inferior to those which they formerly held. Their names are submitted, with the nomination for the brevet rank of the grades from which they were severally reduced.” [22] The administration had opposed any further reduction of the number of Major Generals from the outset, as reported by Secretary of War Calhoun to the Congress in its initial consideration of the reduction act. [23] These nominations presented a possible way around the provisions that the administration opposed.

Most of the nominations were made at Jackson’s bequest. Communicating with Secretary of War Calhoun via a letter dated March 22nd 1821, Jackson writes that Colonel James Gadsden would be a much more fit individual for the office of Adjutant General than the current office holder, General Daniel Parker, in addition to other personnel advisements. [24] Monroe would articulate this nomination of Gadsden in each of his signing messages to Congress, initially in January of 1822 as well as in a later statement in April of 1822. Gadsden was a particular favorite of Jackson and it is clear in this correspondence that Jackson was reacting to provisions of the reduction act of 1821 in securing a position for one of his pet officers. Writing to Monroe, Jackson asserts that were his recommendations in respect to the bill’s provisions not adopted, the Congress would have “destroy[ed] its usefulness to the country by reducing [the military].” [25] In correspondence with Calhoun, Jackson emphasizes his personal preference for Gadsden, writing that “Colonel Gadsden is too valuable to the army and his country for his services to be lost” while also warning that after his name was resubmitted in nomination, “it will be handled by them as a contemptuous conduct of the President to the Senate, that body having rejected his re-nomination.” [26] The historical record further supports Jackson’s characterization of the maneuver by Monroe.

At first though, the Congressional record of debate and proceedings indicate that Monroe’s statement had its intended effect, as far as reconsideration of their measures. Though the Military Peacetime Establishment bill had been passed by the 16th Congress and signed into law by the president, the 17th Congress debated the measure with renewed gusto and zeal, though it ultimately acted against Monroe’s desires. The House considering a measure for further cuts to the officer corps, i.e., a complete elimination of the office of Major general and a reduction in number of brigadiers as well. It is with this new debate that effects of the March 2nd 1821 bill in affect to the elimination of Jackson from the armed forces were fully and articulated.

Congressman Cocke, original author of the resolution that had led to the March 2, 1821 reduction in the military peacetime establishment arose on April 16th 1822 to speak in favor of this further reduction by justifying it on the merits of the previous legislation. His effort was supported by a speech by Congressman Woodcock, who was responding to arguments made by Congressman Sterling of New York that the military offices ought to be maintained as a gesture of gratitude for these men’s service. In his response, Woodcock demonstrates the pervasive suspicion on the behalf of the legislative branch toward the officer corps and how the regular officer corps was a stark departure from the spirit of the volunteer army that had fought the Revolution. Woodcock thundered that “Again we are told that gratitude for those who have fought our battles and defended our country requires us to retain them in office, even if their services are not required... Sir the examples of those brave men, who fought your battles in the Revolution is not forgotten; the same spirit

which actuated them, and led to victory, inspired the officers and soldiers of the late war, to return to private life when their services were no longer useful to their country..."[27]

The Executive Perspective and Action

The traditional methods of understanding "legislative history", floor debates, correspondence, and resolutions clearly demonstrate what the Congress saw at stake in its legislation to reduce the size of the standing peacetime Army. There was no single element such as tradition or Jackson's contemporary conduct that was the primary motivating factor in proposing such legislation. The executive branch seemed to understand this as well, and sought to carry out the Congressional will initially, but after several months of attempted implementation, Monroe writes the Congress in an effort to reconcile legislative mandate with what he saw as practical necessities: namely, the continued strength of a regular officer corps. His statement indeed uses the word reconcile, meaning an amicable solution, rather than the distinct victory of one priority.

Such an approach and understanding of this Special Message, and the Congress's consideration of an addendum to the bill would seem to fit not only historians' characterization of the era, but even contemporaries as well. It was a New England newspaper editor who first coined the term "the Era of Good Feelings" after observing a stop on Monroe's post election goodwill tour throughout the country.[28] Monroe, a Virginian former Anti-Federalist, plantation owner, and dynasty member seemed to represent everything that the typical New England Yankee Federalist would oppose, but he was well received on almost every stop of his tour through the Northern states. Little electoral opposition stood in his way, and the Democratic Republicans were a substantial majority in Congress.

Monroe himself certainly thought of the time in a similar fashion. The president believed that in many ways the ideals of the War of Independence had been achieved. The Federalists were no more, and the personality driven hyper partisan conflict seemed to have been avoided. Monroe believed that America ought, and could be, governed by statesmen who were a legion of "republican saints",[29] men who represented the people and ably tended the tiller of statecraft.

Considering this piece of legislation in particular, Monroe at first attempts to acquiesce to the Congressional will, but runs across some difficulty in its execution. Specifically, Monroe finds that the requirements of the legislation and its establishment of ranks and responsibilities within the Army were incongruent to the actual composition of the officer corps, as well as the administrative recommendations of Jackson. As discussed, the congressional perspective was certainly cognizant as it affected Andrew Jackson, and though this may have been a point of contention between the executive and legislative branches, Monroe managed to sidestep the issue by appointing Jackson to be governor of Florida. He writes Congress in an attempt to sort out further confusion, and Congress responds by considering additional measures in response to this "special message." This second round of debate is certainly a little more terse despite the absence of Henry Clay in the 17th Congress, but the public sessions of the House and Senate do not reveal any deep enmity between the two houses and the president. Though elements of suspicion on the privileged position of the military in the eyes of the executive branch are orated, the harshest language characterizes the corps of officers as the "peculiar favorites" of the president.[30]

As noted earlier, the supposed “favorites” of the president were in fact the particular favorites of Andrew Jackson and Monroe made nominations in accordance with Jackson’s suggestions after his initial endorsement of the measure. The Board of Officers convened by Monroe had recommended General Atkinson to the position of Adjutant General. Though at first this may seem as though the administration was foregoing Jackson’s wishes, it was rather a rather adroit political move. Atkinson had already communicated that he would much prefer remaining in charge of his combat division. Pursuant to the Military Reduction Act, Atkinson remained in command but was reduced in rank. His refusal, and the retention of his tenure seniority at a reduced rank, created an “original vacancy” that Monroe nominated Gadsden to fill, despite the Senate’s original rejection of the nomination. Additionally, other officers who would have ranked ahead of Gadsden were then pushed down further in rank than they would have been otherwise, because of the necessity that they not be given a higher position than the newly demoted Col. Atkinson. The president could then truthfully assert that, in order to fill the offices established by the Military Reduction Act, he had offered the position to the proper general, Atkinson, whose rejection created incongruence in the merit of officers with the ranks that they held.

Legislative scrutiny

Though Jackson had retired from the military and the governorship, and even though Monroe’s initial signing statement did not mention him by name, members of Congress were still seeking to injure Jackson and the continued antagonism was mutual. Prior to Monroe delivering a report on the affairs in Florida as the new year of 1822 dawned, Congress began an inquiry into the conduct of Jackson in the whole of the Florida affairs. Jackson’s friend and business associate in Washington, James C. Craine Bronaugh, reported to Jackson that he had nothing to fear from the investigation, though the aforementioned Cocke and Williams could be counted on to vehemently criticize the General. Bronaugh described these men though, as “perfectly contemptible” and that all the men of “talent and standing” in the body would find Jackson to have acted in the right.

Despite the assurances of his allies, Jackson could not stand the perception that he had resigned amidst a cloud of suspicion, and though he had already submitted his military resignation to become the commissioner of Florida, Jackson immediately wrote Monroe asking to be reinstated, complaining that it appeared to him that none of his life public or private was so sacred that it could not be “traversed by Congress” and that he was eager to have his name cleared in the face of the Congressional investigation, lest it appear as though his honor be questioned. [\[31\]](#)

But the president was facing scrutiny himself in the light of Congress rejecting the appointments that he articulated in his first signing statement. The president would issue another signing statement dated April 13, 1822, that his nominations of Gadsden and others were lawful in “That the reduction of the Army and the arrangement of the officers from the old to the new establishment and the appointments referred to were in every instance strictly conformable to law” [\[32\]](#) and further that: “If the power to arrange under the former law authorized the removal of one officer from a particular station and the location of another in it, reducing the latter from a higher to an inferior grade, with the advice and consent of the Senate, it surely justifies under the

latter law the arrangement of these officers, with a like sanction, to offices of new creation, from which no one had been removed and to which no one had a just claim” [33]

Senatorial Reaction

On April 30, 1822, towards the end of the legislative session that would expire the next week, the Senate passed a resolution removing a self-imposed “injunction of secrecy” and released the body’s executive proceedings for the session. [34] Most of the debate and action taken by the higher chamber occurred in response to their reception of President Monroe’s initial signing statement, or “Special Message” as well as the later statement written by the president and transmitted in a likewise manner. Though the messages had been alluded to in the earlier debates examined in this thesis, the full record of these initial proceedings was naturally absent. Further examination of these later released proceedings makes it difficult to characterize Military Act of 1821, Monroe’s messages, and the Congressional response as a mild disagreement among a cadre of “Republican Saints.”

Senator Williams of Tennessee, the chairman of the Senate Committee on Military Affairs to whom Monroe’s messages had been referred, arose and gave his account on April 25th. It is nothing short of scathing. Williams notes that the committee investigated the appointments put forth by Monroe in his first signing statement and compared his proposals under the 1821 legislation to executive action in response to the mandated reductions of 1802 and 1815. His conclusion on Monroe’s conduct was brief, concluding that “The provisions of the law of the 2nd [of] March, 1821, were disregarded in many particulars.” He would go on to suggest that Monroe had been deceitful and unlawful in approving the legislation and making the reductions asserting that:

“The President ‘approved’ and signed the act of the 2nd march 1821 and at that time, made no declaration of an opinion that the law was unconstitutional, and thereby sanctioning its constitutionality. Having given his assent to this law the committee believes he is, as well as by all others, bound by it. [35] Obviously, Monroe’s second message and signing statement did little to pacify the Congressional wrath, which was only raised by a perceived further trespassing on the legislative priorities of the Congress. Even the attempted administration of the law by Monroe previous to his statement was seen by many Senators to be incompatible with the Act.

Monroe had put together a board in order to carry out the cuts mandated by the legislation and Williams found that this board had “substituted their own will and pleasure, for the rule prescribed by law.” [36] Specifically, the instance of the general officers was discussed by Williams, who accused Monroe of deceptively reassigning several officers, in the hope that the “original vacancy” that he had created would be filled by one of the officers whose expenditure had been mandated by the 1821 law. Williams notes that such an action was entirely contrary to the spirit of the law that called to decrease the size of the general officer corps. According to the Senate committee, Monroe in his interpretation and statement had acted entirely contrary to the spirit of the law, and with a particular deference to the officer corps, suspicion of which had been one of the primary factors in crafting the legislation.

The Senate would reject Monroe’s proposed appointments so as to prevent the reshuffling and promotion of officers that would have been effected by Jackson’s and the president’s proposed arrangements. Secretary of War Calhoun would attempt to protect the

executive branch and the process by which the president's proposed appointments were outlined in sworn depositions to Senator Williams, who dutifully presented them to the Senate's consideration after making his report on the president's execution of the Military Reduction Act of 1821. However these depositions, like Monroe's statement, were ineffective excuses in alleviating the bad blood in Congress.

Throughout Williams' remarks, which were made on the behalf of his committee's entire opinion, there is a profound element of distrust. The President, had, in his eyes subverted the activities and nature of the government, in his messages to Congress and nominations to the Army officer corps. Devoid of context, Monroe seems to be merely using a political maneuver to garner Congressional approval of his preferred course of action in the reorganization of the nation's peacetime military establishment. But upon examination of the origin of the 1821 Act "On fixing the nation's military peacetime establishment" one begins to understand how Monroe's actions were interpreted as a twofold subversion of the Congressional will. The legislative body certainly was suspicious of the idea of a large, peacetime standing body, and the professional officers that were characteristic of it. In addition to this general suspicion the Congress had taken note of the conduct of Andrew Jackson, and was well aware that the proposed legislation likely would have been pushed out from military service by an administration agreeing to abide by the legislatively mandated reduction.

Monroe in his second message noted the somewhat absurd notion that the "defender of New Orleans" might be driven of the nation's service and writes of the other arrangements had been made.^[37] Additionally, the nominations to the various Army posts that he made were found on further scrutiny to have been entirely inconsistent with the legislation. As if this were not enough Monroe had stubbornly resubmitted several nominations despite the Senate's rejection of these men's initial consideration, which was duly noted in the floor speeches surrounding their proposed confirmation, and Monroe was roundly criticized on the chambers' floors.

Explanations

Throughout this entire episode, spanning nearly one and a half years from the day the resolution authorizing an exploration of military reduction was introduced, Andrew Jackson was the central figure in Congress's decision to reduce the military and the executive branch's attempt to maintain administrative control. At first just a symbol, he soon became the object, as his position as major general was eliminated by the legislation. A savvy administrative move by Monroe retained his services to the United States, though it is not initially clear from his previous action why this was done. Jackson's temper and willingness to buck authority had not done him many favors in the executive branch and the War Department; many men in Congress and Secretary of War Calhoun saw him as an impediment to their own political ambitions, if not a threat to the Republic. Why did the executive branch than side with Jackson wholeheartedly in a battle over military administration?

Part of the answer can certainly be attributed to the personal relationship of Jackson to Monroe. Jackson had been an early supporter of Monroe as a successor to Madison and Monroe had served as Secretary of War during the conflicts that made Jackson a household name. Though keenly aware of his temperament and never overly friendly, Monroe knew Jackson to be not just a competent administrator and general, but an extraordinarily talented one.^[38] These

same qualities that were impediments to other's aspirations were qualities that the leader of the nation sorely desired in his attempt to defend the nation and secure its territories and borders.

Monroe's correspondence with Jackson says little of the ongoing battle in Congress,^[39] but his defense of the military and by extension, Jackson and his recommendations is nearly absolute. But it is not solely recognition of Jackson's importance that Monroe battled with Congress, but due in large part to a desire to protect the executive prerogative in administration of the military. Monroe routinely cites the spirit of the legislation and the Constitution in giving the president appointment power, and he sought to protect this privilege, regardless of what Jackson's recommendations were. The president may have believed in "republican saints" but he also believed in the division of duties imposed by the Constitution.

The victories of Jackson in 1812 and his securing of Florida from the continental powers created a new sense of military nationalism that was coordinate of the "Era of Good Feelings."^[40] However, Monroe's signing statement highlights new internal political battles. Among institutions, conflict existed between the executive and legislative branches over military administration. Amongst men, it pitted would be presidents in the legislative branch, such as Clay, versus a would-be military general turned president, Andrew Jackson, whose victories had brought about a new nationalist culture. Monroe, less concerned with his future and more so with the security and administration of the American state, sought to protect this national sentiment as a condition important for collegial government and "Republican Saints" lest the nation be split by renewed faction and sectionalism. He did not seek to protect Jackson for Jackson's own sake. Additionally, the military had been the most instrumental in securing American security and domination on the continent, requisites for the forthcoming Monroe doctrine, treaties with the British after the War of 1812 and the Spanish after Jackson's acquisition of the Florida territories was only achieved after victory.

Thus the examination of Monroe's signing statement reveals not a mere disagreement with Congress but a profound tension in purpose, scope, and power. To be certain, the executive branch was jealous of its control of the military and eschewed any congressional fetters. The Congress was likewise suspicious of the military and the executive branch in its efforts to consolidate power. Though the judiciary is absent from this particular battle, the philosophical principles of the founders and the system set forth by the Constitution are clearly evident in this particular examination of the signing statement. The legislative and executive branches are naturally at tension with one another and act to check the other's power. It's a struggle that is central and fundamental to understanding American history, the breadth of which is impossible to capture in hundreds of books. Signing statements are just one element of this narrative, and this section, focusing on the very first, demonstrates how this idea of executive-legislative tensions is evident even in an "Era of Good Feelings."

Section II, Intercalary

Bridging the Gap

Signing Statements and the Battle for Administrative Control

The purpose of this section is very different from either part preceding or following. In the other sections, I provide a fairly in depth examination of particular signing statements that represent key moments in the political development of the executive branch. The two statement eras that I have chosen represent the “birth” and “rebirth” of the signing statement in political notoriety and by extension, the current academic literature. However, nearly two centuries of history lie in between, leaving a chronologically structured exploration of two signing statements with a gaping hole in the middle. I hope to provide a framework for understanding administrative trends and linkages between the birth and rebirth of signing statements with the following section.

Signing statements did not simply fall into disuse, but began to be used on the whole to lesser effect after the Jackson administration. The vast majority of the statements in this lengthy time period are simply proclamations that highlight the importance of a statute. While acknowledging the existence of such proclamations, I do not intend to spend much time in examining these passive sorts of statements. But, statements that I describe as being of a active nature, directing the internal executive administration, informing Congress of the president’s preference of a certain action or inaction, or registering the president’s doubts of legislation’s constitutionality, do exist, though are few and far between throughout this period. Unfortunately I will be unable to cover these various statements with the amount of depth that I was able to give to the first section. What I intend to outline in this chapter however is how several of these statements were used to direct presidential administration, and how, as the size of the executive bureaucracy swelled, Congress and the president increasingly battled over appointments to office and Congressional patronage of individuals and projects. Just as Monroe did, several of his successors turned to signing statements to control administrative policy and personnel.

What will hopefully become evident, as in my description of the “Era of Good Feelings” is that whatever the partisan composition of the executive and legislative branches may be, the varied natures of their priorities often force their actions conflict with one another. My research and analysis of these clashes have led me, perhaps unsurprisingly, to focus on the Jackson and both Roosevelt presidencies, men who sought to impose their own vision of executive administration of the federal government, and in doing so found themselves ruffling more than a few congressional feathers. Each of these men issued a notable signing statement that demonstrates the reoccurring conflict over administrative control between the executive and legislative branches.

My understanding and outlining of administrative control in this section is particularly indebted to the political development foundations laid by scholars such as Stephen Skowronek, Edwin Corwin, and Keith Whittington. Their work has been critical in providing a broader framework for understanding the growth of executive departments and the emerging federal administrative power. Without these larger perspectives that they established in political development, it would be difficult to establish a basis for understanding the importance of

signing statements in this long time period without the paradigm of national administrative growth and development

Perhaps most critical to these meta-trends are theories of reconstructive politics as described by these political scientists. Unsurprisingly, the figures that implemented the few notable signing statements during this intermediate period are classified in the American political development literature as “reconstructive” presidents, that is, figures who refashioned the American state after inheriting an executive branch that had been discredited by the actions of their predecessors.^[41] I owe the use of the term reconstructive and of course the idea to Skowronek and Whittington. Though the figures discussed here were identified independent of these scholars’ research, understanding the broader elements of these president’s administrative vision within the grander scope of American history is what made this section possible. Additionally, Skowronek and Whittington have offered explanations for the institutional battles between the executive and the legislative branches as well. Despite the unified nature of government in this period, in that a single party controlled both the legislative and executive branches, this refashioning of the state by the executive branch conflicted with the Congress, as a sort of institutional battle among powers.

Administrative Battles: Directive Signing Statements from 1830-1946

Andrew Jackson, already described as one of the major figures in Monroe’s initial signing statement used Monroe’s precedent to a very similar purpose, albeit with a more forceful tone. Whereas Monroe’s concern was allegedly focused on resolving a discrepancy in the law, Jackson was very clear that his statement was a product of his own administrative prerogative and that he was directly contesting the legislation; he issued the statement not because of the legislation’s legality, but because it did not fall into line with his political preferences. This broad side attack is not necessarily surprising coming from Old Hickory, as he was also the first president to veto legislation based on preference, rather than constitutionality. Jackson’s action represented a marked change in course from previous chief magistrates. Whereas his predecessors and successors alike would make multi-layered arguments of which legality was the most apparent question, Jackson boldly stated his intentions on May 30, 1830 in a Special Message ^[42]:

“To the Senate and House of Representatives of the United States,
GENTLEMEN: I have approved and signed the bill entitled "An act making appropriations for examinations and surveys, and also for certain works of internal improvement," but as the phraseology of the section which appropriates the sum of \$8,000 for the road from Detroit to Chicago may be construed to authorize the application of the appropriation for the continuance of the road beyond the limits of the Territory of Michigan, I desire to be understood as having approved this bill with the understanding that the road authorized by this section is not to be extended beyond the limits of the said Territory.

ANDREW JACKSON

Though the Michigan Territory did include the future state of Wisconsin and parts of Minnesota, it certainly did not include Chicago, meaning that Jackson, though ultimately registering his approval of the bill, was at the same time rejecting a key provision of the legislation and the Congressional intent. *Gibbons v. Ogden* affirmed the Congressional power to regulate interstate commerce, but Jackson's administrative priority was to limit the extent of the Congressional power by executive fiat.

Jackson won his fame on the battlefield but despite the popularity and electoral success of his Democratic party, still had philosophical and personal enemies in Congress. Henry Clay, in addition to his personal loathing of Jackson, continually pushed for large-scale federal investment in internal improvements no matter how local they might be as part of his proposed "National System." Though the 1828 election had ensured the victories of Jackson's supporters in Congress, that did not mean that the legislative branch, just as it refused to do during Monroe's time, would fall in line with the president's wishes. Congress would make the laws in as broad or narrow of a matter as they saw fit, but by the same token, Jackson simply refused to enforce provisions that he did not like. This obstinacy certainly echoed his famous comments to Chief Justice Marshall as to the enforceability of a Supreme Court decisions. [43]

Even so, Jackson timed his special message to Congress to ensure that little action could be taken. May 31st marked the adjournment of each house for the summer recess. Jackson's message was delivered to the Senate on May 30th, whereas the House of Representatives was not informed until the very day of adjournment itself. Jackson additionally delivered a veto message on another internal improvements bill on May 29th, ensuring that the day's business would be concerned with reconsideration of the bill, known as the Maysville Road Bill. [44]

If Jackson had no intention of building the road to Chicago, and if his statement had the same effect as a veto, why did he veto the proposed road, which he certainly had no fear of doing based purely on politics? He had vetoed the Bank of the United State and other comparable internal improvements, why not a road appropriation? A closer look reveals a somewhat more nuanced divide between the Congress and the Presidency in political preferences than the statement suggests and how this cleavage was carried over into executive and administrative policy. Jackson, though in favor of this particular internal improvement, rejected the road's extension to Chicago because at its core it was a patronage, or in more modern parlance, "pork barrel" project of the national legislature. Jackson approved of large portions of the funding bill, specifically the provisions that provided for land surveys of the newly developing Western territories. As he stated in his Maysville veto message, Jackson wanted to be certain that bills passed by the national legislature were of national significance. State improvements, Jackson believed, ought to be carried out by the states, and local projects should not receive federal funding except when they met this standard of national impact.

Jackson found himself in a different situation than Monroe, in that this signing statement did not suggest that it was trying to rectify a bump in the administrative road, but fundamentally and directly altered the course and extent of the proposed action. This is drawn in sharper contrast with Monroe's philosophy because Jackson did not believe that he should veto only bills that he believed to be unconstitutional. Rather what Jackson attempted to do with this signing statement, and what members of the House would accuse him of doing, was exercising a sort of line item veto. The bill was at its heart an appropriations bill, but Jackson did not want to veto the bill and the appropriations he believed to be meritorious, he merely wished to cut out the road extension, which he did in his signing statement. Congress, in crafting the legislation had clearly

signaled how it desired that the internal improvements monies be appropriated. Jackson, in his signing statement, had made clear his political and administrative preference that federal funds not be appropriated for a local project.

Part of the reason for this difference in opinion can certainly be attributed to the varying constituencies of the executive and legislative branches. One of the reasons that Jackson was opposed to federal funding of local projects because of the pork barrel aspect briefly mentioned earlier. Jackson was certain that such appropriations would lead to electioneering and that candidates' platforms would soon exist solely of bridging streams and building roads.^[45] Election promises, and the precedent set by the flow of federal money into such local projects were some of Jackson's greatest fears. A road extension wholly within the State of Illinois from the Michigan territorial boundary to Chicago, ought to be paid by the state itself, lest Congressmen continually drain the national treasury of funds in order to pay off their own constituents.

With this brief overview of Andrew Jackson's signing statement, it is evident that despite differing philosophies and contexts, remarkable similarities exist in these two administrative battles. Whether it be military personnel appointments or certain items within legislation, a contest over federal actions and prerogatives existed between Congress and the Presidency that is best understood by political and historical context. It is furthermore important to note that the use of the presidential signing statement as an administrative tool in both Monroe and Jackson's administrations was by no means accidental; correspondence between Monroe and Jackson concerning the military appointments act of 1821 indicates that Jackson was well aware of Monroe issuing a "Special Message" noting the executive branch's preferences in administering the law.^[46] Though the use of the term "Special Message" in and of itself is fairly ubiquitous, the specific demonstration of political preference while still endorsing the legislation is not.

From a state building perspective, much of which will define the later administrations of power that will be discussed here, Jackson's statement is a bit of an oddity in the general narrative. His statement, as well as his Maysville Road veto, rolls back the involvement of the federal administrative state in contrast to the expansive efforts of the Roosevelt presidencies. But what Jackson does enlarge here is the presidential prerogative, a precedent that would cause later, sharper divisions as his successors battled Congress over the control of the administrative state and the role of the executive as a major determiner of personnel. Jackson finds himself defending the executive branch and national priorities against the patronage projects of congressmen with much different agendas, battles that Theodore and Franklin Delano Roosevelt would fight in their own expansive attempts to reshape administration. This view is further supported by the work of Skrwonek and later Whittington,^[47] who identify the transformative roles these presidents played.

To be certain, there are countless struggles over administrative power in the eight-decade period from Andrew Jackson to Theodore Roosevelt. But among these years and battles the role of signing statements is less prominent, though consistent in quantity. Lincoln's use of a signing statement, is best viewed as an extraordinary measure inconsistent with antebellum and post Civil War administrative battles, I choose not to examine it here because the Civil War created circumstances that are inconsistent with regular presidential power. Indeed, it was in this post civil war period and the expansion of federal sovereignty in the Reconstruction era that

Congress reached its zenith in its control of the administrative state. One might look to the impeachment of Andrew Johnson over his removal of cabinet level officers to understand this.

The Republican dominated Congress, wary of Johnson's less radical course in Reconstruction efforts, consistently fought against Johnson's attempts to assert further executive power in administrative and personnel appointments.^[48] From the Congress's perspective, it appeared as though Johnson was attempting to fill the federal bureaucracy with his own supporters in an effort to entrench his political position through control of the bureaucratic state.^[49] Johnson had been attempting to reverse the patronage tables on Congress in his removal of officials and appointments in their place, but Congress reacted violently to this supposed encroachment with impeachment charges and a trial where he was acquitted by only one vote. Nevertheless, the Congress and its leaders ensured that there would only be one Johnson administration. Successors would take note of this failure in reconstruction, and it would not be until Theodore Roosevelt that another reconstitution of federal administration would be attempted again.

It is important to highlight the Johnson administration because his impeachment and attempts to assert greater executive control over federal government administration sets the stage for the post Civil War presidencies leading up to Theodore Roosevelt. The future president Woodrow Wilson, writing in his seminal work, *Congressional Government*, described the power of the legislature aptly in his description of the United States House of Representatives Committee chairman: "[It] is divided up, as it were, into forty-seven seignories, in each of which a Standing Committee is the court-baron and its chairman lord-proprietor. These petty barons, some of them not a little powerful, but none of them within reach [of] the full powers of rule, may at will exercise an almost despotic sway within their own shires, and may sometimes threaten to convulse even the realm itself".^[50] Clearly, Wilson believed that the execution of administration by an independent executive branch was almost non-existent and fully alterable by the legislative representatives in execution. This was a state of affairs thoroughly unpalatable to the Roosevelt presidencies and the distant cousins would profoundly change the composition, scope, size, and influence of the federal bureaucracy.

Theodore Roosevelt is recognized alongside Jackson as one of the most transformative and influential presidents in forming new conceptions of the executive branch. Such a comparison has been made not only by historians and political scientists, but by Roosevelt himself, who aspired to be the leader on the "Jackson, Lincoln" model.^[51] After Jackson and the premature death of Lincoln, Congress had risen to fill the power vacuums created by executives not as activist or popular. In the Reconstruction era and post Reconstruction years that led up to the turn of the 19th century, it was the legislative branch that controlled the balance of power in Washington and doled out appointments to key supporters. Roosevelt, ascending to the executive office after the assassination of William McKinley, brought with him a far different vision of the executive branch than those of his immediate predecessors. His new accession to the office was not the work of the party caucus, political bosses or machines, and he owed little in the way of appointments or spoils. Roosevelt saw this landscape as an opportunity to remove the executive office from a subservient position in relation to Congress while further crafting an executive branch that was proactive and independent.

The most important step was creating an executive branch that was professional and independent by reforming civil service appointments to exist at the greater discretion of the executive branch, while divorcing the positions from Congressional interference. Roosevelt's

civil service reforms ensured longer terms for the most popular patronage offices in an effort to create an experienced and effective bureaucracy. Additionally, Roosevelt sought to improve bureaucratic efficiency and effectiveness by appointing commissions and panels to provide recommendations on executive agencies. It should also be noted that such agencies were not merely focused on executive administration, but that panels on all number of Roosevelt's favorite subjects, including the fine arts, were convened at the sole direction of the president. [52] Roosevelt desired an energetic, muscular executive branch for what he saw as a robust, emerging nation.

Legislators perceived civil service and bureaucratic reforms as being made at the expense of the Congressional power, and these expansions of executive prerogative raised the ire of legislators as well, even though Roosevelt's Republican party controlled the body. This incident once again underscores the point that historically, administrative battles, particularly those that lead to the issuing of signing statements, are fought when single party control government exists. It was a Republican, Joseph Tawney of Minnesota, who offered an amendment in the House designed to restrict one of the key administrative aspects of Roosevelt's presidency, the appointment of special compensated and even voluntary committees, "unless the creation... shall have been authorized by Congress". [53]

Tawney was particularly strategic about this measure, attaching it to an essential sundry civil appropriations bill that was due to pass in late February of 1909 as Roosevelt's term was in its last week. Roosevelt lashed out against the measure and would later characterize Tawney as one of the chief advocates for special interests against the general welfare of the nation. [54] His signing statement to the bill asserted that: "I would not sign the bill at all if I thought the provision entirely effective. But the Congress cannot prevent the President from seeking advice. Any future President can do as I have done, and ask disinterested men who desire to serve the people to give this service free to the people through these commissions." [55] The president, writing in his memoirs, further asserted that even if he had signed such a bill earlier on in would not have received his compliance either and would have prevented six of his important commissions from carrying out their actions. [56]

This was precisely the intent of Congress which had had repeatedly fought Roosevelt's attempts to remake the executive bureaucracy absent legislative approval. After the 1904 elections, Roosevelt called together executive commissions on his own authority, focused on improving the "economy" of the executive branch and expanding the number of offices that were merit, rather than patronage based. [57] These maneuvers threatened upset the state of affairs that had routinely been followed for nearly three decades after the Civil War and the several that had preceded it in post Jacksonian America.

Despite ascending to office as Roosevelt's hand picked successor, President William Howard Taft agreed with the spirit of Tawney's Amendment as a part of his rejection of Roosevelt's assertion of broader authority. Roosevelt himself insisted that while he had expanded executive power, he could not be accused of usurpation and that he was merely consolidating "residual" power that no other branch was exercising. [58] Writing in 1916, Taft noted he found such a claim as Roosevelt's to be "irresponsible" in its lack of limitation on the executive power. Of course it was Roosevelt's general disappointment in his acolyte that caused him to run for president again, splitting the vote, and placing into office Woodrow Wilson, who had earlier written on the problems as an academic.

Taft, writing for the majority in the *Myers v. United States* did strike a blow for the executive branch as the prime administrator of government by affirming the unchecked removal power of the president of executive officers, the issue that had resulted in the impeachment of Andrew Johnson. This key decision strengthened the executive branch prerogative against the patronage impulses of Congress, specifically the Senate, which had insisted earlier that if it had the sole power of consent to personnel, its approval was required to remove said persons from office. This ruling certainly seems to have settled the broader Constitutional question about which branch would be held power in personnel appointments where the Constitution and the statutes were silent, but this did not stop Congress from continually writing in its own appointment check, as is the case in the third administrative signing statement battle in this intercalary section.

Franklin Delano Roosevelt's 1945 signing statement attached to an appropriations bill is especially noteworthy in that it culminated in a Supreme Court case that indirectly tested this executive function. Franklin Roosevelt's expansion of executive administration perhaps ought to be characterized like Lincoln's as an extraordinary reaction to the extraordinary circumstances of the Great Depression and the Second World War, but, unlike the executive branch in the wake of the Lincoln presidency, his administrative impact did not perish with his own death in office. The FDR government expanded Theodore Roosevelt's consolidation efforts of the administrative state into an even larger bureaucracy with the president as its unquestioned leader, though the Congress was not eager to cede this administrative control without a continued conflict.

The general circumstances behind the latter Roosevelt's use of a signing statement are remarkably similar to those of both Andrew Jackson and FDR's predecessor cousin. An executive who had ridden a wave of populist support into office, Roosevelt had a Congress full of his "New Deal" supporters, but such supposed partisan solidarity did not assure that the executive branch and the legislature would not wrestle over administration and execution within the burgeoning federal bureaucracy expanded in the wake of a Great Depression and a World War. Rather, the expansion of federal bureaucracy that coincided with the executive branch's reaction to these events merely raised the stakes for executive control and created new battlegrounds.

Robert Lovett, Goodwin Watson, and William Dodd Jr. were executive branch employees who had their pay cut off by an appropriations measure that followed the normal Constitutional journey through both Houses before receiving President Franklin Roosevelt's endorsement. Watson and Dodd were Federal Communications Commission employees, while Robert Lovett was the Government Secretary for the Virgin Islands. The legislative bodies had passed the Urgent Deficiency Appropriation Act of 1943 with an amendment that read that "after November 15, 1943, no salary or compensation should be paid respondents out of any monies then or thereafter appropriated except for services as jurors or members of the armed forces, unless they were, prior to November 15, 1943, again appointed to jobs by the President with the advice and consent of the Senate"[\[59\]](#) These men had been accused by several figures in the House of Representative of being disloyal to the United States and the amendment was an attempt by the lower chamber to remove them from executive service. Important facts to note in this circumstance is that the men in question were not previously in executive capacities subject to consideration of the Senate; furthermore the executive offices for which they worked thoroughly approved of the plaintiff's job performance, to the point where even after November 15, 1943 these offices continued to assign them job functions and responsibilities.[\[60\]](#) Lovett,

Watson, and Dodd, challenged the constitutionality of the congressional action and the Supreme Court took it up in 1946.

The special counsel appearing for Congress articulated in oral arguments the rationale for the legality of such a measure of Congressional control by citing the Constitutional provisions of Article II. This is of the course the section of the Constitution that empowered Congress to make law necessary for the execution of law and stipulated that monies could only be drawn at congressional bequest. A blacklist action though is beyond the legal argument for such action. As the plaintiffs in this case were suspected of being disloyal to the United States government and members of subversive organizations, the cutting off of their salary was a clear attempt by the Congress to oversee the executive administration, specifically personnel selection as in earlier situations detailed in this section.

The solicitor general, arguing per usual on behalf of the executive branch, claimed that such an appropriation tie was subversive to the executive branch and an attempt to supersede his authority over the executive branch by demonstrating an implied removal power that had been challenged in *Myers v. United States*. The situation further highlights the House of Representative's claims to executive power and personnel control that were in this instance rejected by the U.S. Senate. After four conferences and attempts to reconcile the legislation between the two bodies, during which the Senate refused to include the amendment, the Senate gave its reluctant assent in the fifth report, and agreed to the appropriation's bill. Though the chambers were divided on this particular issue, the incident highlights to what length legislators would go to exert control of appointments, even to the point of writing specific legislation.

More interesting though for the purposes of this work is President Franklin Roosevelt's signing statement in endorsing the appropriation's bill. Roosevelt wrote that it was a matter of necessity that he sign the bill but that he felt compelled to "[place] on the record my view that this provision is not only unwise and discriminatory, but unconstitutional." [61] Roosevelt, though using a legal challenge in this signing statement, first makes the political preference argument made in signing statements that has come under scrutiny in this work. Monroe, Jackson, Theodore Roosevelt, and Franklin Delano Roosevelt all disagreed with Congress first and foremost over the manner of executive preference, whether it was in policy or personnel selection. [62] Beyond the mere existence of such a signing statement, Justice Black, writing for the majority, used the president's interpretation to buttress his opinion and by implication, demonstrates that the executive branch had not only a right to assert its prerogative in the execution of a law, but to further challenge the legal status of specific provisions within a piece of legislation.

Understanding the Signing Statement as a perspective on inter-branch battles of state administration

This intercalary section may seem out of sorts with the first and last chapters of this thesis because it undertakes a different sort of work. In the other sections, I suggest contemporary political trends to consider in understanding the development of two important signing statements: the initial statement issued by Monroe, and in the next chapter, the signing statement issued by the Reagan administration that ushered in an era where the use of such "directive" statements would become almost commonplace.

By no means does this chapter attempt to be completely authoritative in understanding the development of the American political state; this is the work of an entire lifetime and libraries of volumes. Rather, it suggests an argument that may be obvious to American political historians and scholars but is nonetheless important to note: as the size of federal administration and bureaucracy increased, so did the number of battles fought between Congress and the executive branch, battles that became especially heated when proactive presidents held office. It specifically highlights the signing statements that served as forceful expressions of presidential political and executive preference, and the goals of the men behind them.

Directive signing statements were not especially commonplace, nor did they receive much public, or even now, historical attention. What has been suggested here is that signing statements are an important gateway to understanding political development trends and the conflicts associated with them that define much of American history. The first and last chapters assert that understanding the contemporary political context is key to understanding the particular emergence signing statements, this chapter works to demonstrate the lasting value of studying signing statements to forming just such a contextual understanding in varying eras, Congresses, and presidencies.

Section III

“The power of the executive to shape the law”

Part One: The opportunity for institutionalization

In the outset of this work, I considered what seemed to be a rather mundane presidential administration document and its role in the birth of signing statements. The rebirth is accompanied by similar documentation. On February 5, 1986, Deputy Assistant Attorney General Samuel Alito, assigned to the White House Office of Legal Counsel (OLC), wrote a memorandum that was a “preliminary proposal...for implementing ... the fuller use of Presidential Signing Statements.”^[63] Alito extrapolated on the necessity of this action in the next portion of the memo, entitled “Objectives”; it read as follows: “Our primary objective is to ensure that Presidential signing statements assume their rightful place in the interpretation of legislation. In the past, Presidents have issued signing statements when presented with bills raising constitutional problems. OLC has played a role in this process, and the present proposal would not substantively alter that process.”^[64] If no substantive change in process was proposed, why have I included this memorandum and why was Alito writing? Alito addresses this question: “The novelty of the proposal previously discussed by this Group^[65] is the suggestion that Presidential signing statements be used to address questions of interpretation.”

The fundamental problem, according to Alito, was that when the courts were examining and interpreting pieces of legislation, the judiciaries seemed transfixed by the “congressional” or “legislative”^[66] intent, but such consideration was not customarily afforded to the executive branch opinion. Alito notes the focus on the legislative rather than the presidential interpretation isn’t all that surprising because the executive branch rarely took opportunity to make such a commentary. Providing such comments though, would yield two benefits in Alito’s opinion: “First, it would increase the power of the executive to shape the law. Second, by forcing some

rethinking by courts, scholars, and litigants, it may help curb some of the prevalent abuses of legislative history.”

To be certain, Alito understood that implementing such a practice would not be that simple. He goes on to discuss the likely Congressional reaction, the problem of implementing statements across the executive branch, and whether or not the president would even be willing to make the issuing of such statements common practice. A particular emphasis here should be placed on how customary Alito envisioned the new, “novel” use of signing statements would become. Alito describes a method for addressing this increase in statement, calling for the hiring of new staff to form a sort of “clearinghouse” by which every such statement and its departmental significance be examined and reported. Even so, the limited number of signing statements that had been composed in the past by the Office of Legal Counsel had been subject to bureaucratic scrutiny, and was altered by the Office of Management and Budget or the White House itself.^[67] Should the practice increase, Alito claims that the problem of coordinating meaning across multiple departments within the executive branch would grow in magnitude.^[68] These far reaching prospects and anticipation of concerns underscore just how important and how regular a practice Alito believed signing statements needed to become

This memorandum was a part of a concerted effort by the Reagan Administration to restore what it saw as the proper balance of power. This plan is highlighted in examination of three landmark Supreme Court decisions in which the Reagan administration aggressively pursued court rulings to broaden the branch’s administrative powers. The decisions themselves demonstrate a shift in American politics after the Watergate era and set the stage for a new era of executive administration.

From the period immediately after World War II until the untimely death of President Kennedy, the relative strength of the presidency had ebbed and flowed, risen and fallen. Harry S Truman left office defeated and unpopular, but the election of Dwight D. Eisenhower, the Allied Commander in Europe, ensured that that the office would regain its stature be held by a commanding, popular, executive personality. The highly unpopular Vietnam War seemed to have weakened the office but the election of Richard Nixon once again seemed to demonstrate a preference for a strong personality president in tumultuous times. It was his personality, administration, and politics that brought about the narrative of the “Imperial Presidency”, as described by Arthur Schlesinger, Jr. Ironically enough of course, it would be Nixon’s actions that would severely damage the office and bring about a state of affairs in which Congress assumed much power.

Emblematic of this new Congressional power was the use of the “legislative veto”, where by concurrent resolution either legislative chamber could supercede the actions of an executive office, even in a circumstance where the Congress had previously assigned such power. Though it had existed in some form or another since the 1930’s, this legislative provision reached its zenith in the wake of Watergate^[69], where an American public had lost faith in the office of the president. Given the legally questionable actions of Nixon, Americans were eager to endorse any new check on executive power by the other branches. Gerald Ford was perhaps doomed to be a weak president from the outset, and Jimmy Carter was seen by many as a president at the mercy of Congress, even submitting himself to the legislative veto. It was to this seemingly severely weakened office that Ronald Reagan was elected to in 1980.

The Supreme Court enters the field

In 1983 the Immigration and Naturalization Service ruled that Jagdish Chadha had overstayed his visa. The agency, though part of the executive branch, was legally required to report the initiation of deportation proceedings to Chadha to the House of Representatives, which it did, but the House was statutorily authorized to veto the initiation of such proceedings, and the lower chamber did take opportunity to register this “legislative veto.”^[70] The administration took an interest in this override and filed suit in federal court. Though Chadha is listed as the respondent, counsel for the House of Representatives and the Senate appeared before the Supreme Court, as did the Solicitor General for the INS. This was no longer an immigration status question. The visa dispute was transformed into a battle over the separation of powers and the role of the legislative branch to regulate executive affairs.

The basis for the Court’s decision in favor of the INS is fairly elementary. The legislative measure that passed the House had not been introduced in the Senate. Thus, it had not fulfilled the bicameral requirement of legislation. Additionally, the resolution was never sent to the White House for the president’s signature, violating the Constitutional provision that each legislative act be “presented”^[71] to the president for his signature. It is this latter consideration that the Office of Legal Counsel would seek to broaden in its scope, and the office would soon makes steps toward doing so after the *Chadha* decision.

With this decision the “legislative veto” that had weakened the resolve of the Ford and Carter administrations in the wake of Watergate was eliminated. Administrative control could only be exercised by the full Congressional legislative action and presidential concurrence in the absence of a veto override. Another federal case soon arose that questioned how broad the executive branch’s administrative powers were. In *National Resources Defense Council v. Chevron*, the environmental group plaintiffs questioned whether or not the Environmental Protection Agency, an executive office, was properly executing the provisions of the Clean Water Act. Justice Stevens wrote for the majority that the executive branch was to be given leeway when this sort of legislative silence existed:

We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, [n14] and the principle of deference to administrative interpretations has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations. . . . If this choice represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned.

In this unanimous ruling the Court continued to grant broad executive license to the executive branch. Though this opinion did not necessarily come at the expense of Congress, making it slightly different than the other two cases that will be discussed, it did reinforce the legal ground for the executive branch to make its own interpretations on scenarios where the law was unclear. According to the Court though, this interpretive breadth was limited by the legislative history of the bill, which the Attorney General’s later hoped to amend as the primary consideration in understanding legislative intent.

Another case in which the separation of powers was judicially examined arose concerning appropriation legislations. Reagan had run on a platform that promised fiscal responsibility and reduction of the size of government. However, the administration had also promised to increase defense expenditures. Haggling over the budget in 1985, the Congress and the administration were both concerned with increasing deficits. Under the direction of the administration, the Gramm-Rudman Act was introduced to attempt to reduce the deficit. Though it temporarily allowed the raising of the debt ceiling, the act directed the executive to impound spending when the debt reached a certain level of GDP, as determined by the Comptroller General. The impoundment of funds itself was a political hallmark of the Nixon administration and thus a sore spot for many Democrats in Congress. Furthermore, the Act initially gave the president discretion in determining which funds he would impound. Democrats were especially concerned that the president would only impound funds from programs that he didn't like and wouldn't touch defense spending.[\[72\]](#)

The key element though was the role of the Comptroller General. The Comptroller General was charged by the Gramm-Rudman Act to determine whether or not the budget passed by Congress had met appropriate levels for deficit reduction based on the recommendations of the legislative Congressional Budget Office and the executive Office of Management and Budget. If his report concluded that they had not, the president must impound funds based on a formula provided in the Act, though Congress might pass exemptions to the impoundment mandate or reduce spending in a manner that different from the formulations of the impoundment mandate.

Created in 1921 as a replacement for the Comptroller of the Treasury, the Comptroller General is appointed to a fifteen-year term with the advice and consent of the Senate. He may only be removed from power by a legislative act, and thus does not serve at the direction and the pleasure of the president, though never in the entire history of the office has the Comptroller General been removed by the specified Act of Congress. Constitutionally, this means that he is an officer of the legislative branch and the Court took up the question of whether or not this status prevented him from performing what was essentially an executive function, in that it was the Comptroller General's report that would trigger the sequestration order.[\[73\]](#) This is a question closely related to other controversies that I have examined, namely it notes attempts by the Congress to direct the execution of law or at least influence the manner in which it was administered, a well established, historical desire of the legislative branch.

In consideration of the case, the Court referred to Justice Taft's decision in *Myers v. United States*, which affirmed the broad removal powers of the president, while also considering *Humphrey's Executor v. United States* that rolled back the removal power of the president when a quasi legislative or quasi judicial body was in question.[\[74\]](#) But perhaps the most influential case in Justice Burger's majority opinion was the recently decided *INS v. Chadha*, which prevented the Congress from directly supervising an executive action. Citing older European and American historical and philosophical principles of separation of powers and checks and balances, Burger and a majority of the Court ruled that the Comptroller General was in a subservient relationship to Congress because he was removable by joint resolution, and that under the Gramm-Rudman Bill the Comptroller was performing an executive action. The Court, as it did in *Chadha*, made a highly "formalistic"[\[75\]](#) model in the opinion of some observers, whereby the only check on executive power was under a legislative act that fulfilled both the bicameral and presentment clauses of the Constitution.

A closer reading of the bill itself notes that the potentially problematic role of the Comptroller General was not unanticipated. In fact the bill provided for a fall back provision by which an alternative mechanism of deficit reduction was instituted should the initial methodology be "invalidated"[\[76\]](#). This fallback provision was a joint house committee whose recommendations would need to be presented to the Congress as a joint resolution and signed by the president. The existence of the fallback was noted by the Court in registering its own skepticism of the Comptroller General's role as it seemed to demonstrate the legislative body's own doubt in the provision.

Judicial and legislative opinions were by no means the only voices heard in this debate though. In registering his assent to the Gramm-Rudman Act on December 12, 1985, President Reagan noted not only the key provisions that increased the debt ceiling temporarily while providing a path to deficit reduction, but also that he was

mindful of the serious constitutional questions raised by some of its provisions. The bill assigns a significant role to the Director of the Congressional Budget Office and the Comptroller General in calculating the budget estimates that trigger the operative provisions of the bill. Under the system of separated powers established by the Constitution, however, executive functions may only be performed by officers in the executive branch. The Director of the Congressional Budget Office and the Comptroller General are agents of Congress, not officers in the executive branch. The bill itself recognizes this problem and provides procedures for testing the constitutionality of the dubious provisions. The bill also provides a constitutionally valid alternative mechanism should the role of the Director of the Congressional Budget Office and the Comptroller General be struck down. It is my hope that these outstanding constitutional questions can be promptly resolved.[\[77\]](#)

Though certainly not the first signing statement in the Reagan Administration, it was the first one to assert such broad executive interpretation. In retrospect, Reagan's, or perhaps rather, the Office of Legal Counsel's interpretation of the statute, seems spot on with the Supreme Court's majority decision in which Burger wrote that

the Constitution does not contemplate an active role for Congress in the supervision of officers charged with the execution of the laws it enacts. The president appoints "Officers of the United States" with the "Advice and Consent of [478 U.S. 714, 723] the Senate . . ." Art. II, 2. Once the appointment has been made and confirmed, however, the Constitution explicitly provides for removal of Officers of the United States by Congress only upon impeachment by the House of Representatives and conviction by the Senate. An impeachment by the House and trial by the Senate can rest only on "Treason, Bribery or other high Crimes and Misdemeanors." Art. II, 4. A direct congressional role in the removal of officers charged with the execution of the laws beyond this limited one is inconsistent with separation of powers.

In this instance, certain symmetry exists between the executive and judicial interpretations of the legislative Act and the legal interpretations are comparable if not even relying on the same constitutional foundation. In fact, Reagan's signing statement is cited in Supreme Court decision

on the Gramm-Rudman Act, a distinction previously only held by Franklin Roosevelt's assertion in *Lovett v. United States*. Reagan would even note in his statement that he the executive branch had consistently communicated to the Congress that it believed the role of the Comptroller General to be unconstitutional and that it was forced to resort to the signing statement as a sort of last resort.

At this point it is important to make a chronological observation. Gramm-Rudman was passed in December of 1985 and challenged in federal district within hours of receiving the president's endorsement. The case was argued orally before the Supreme Court in April of 1986, and the majority opinion of the court, with its citation of Reagan's signing statement, was not released until July of that year. When Alito was writing of how to increase the residential influence on judicial interpretation he did not have a contemporary example of how it might work. Instead, Alito attempted to create a pathway where just such an interpretation would become influential and was unaware of the success of Reagan's statement in the outcome of *Bowsher v. Synar*. One more chronological fact is important to delineate as well: Ed Meese, the Attorney General for Reagan at this time and the supervising officer of Alito and the White House Office of Legal Counsel, was not appointed and confirmed until 1985, and it is only with this appointment that the OLC began to aggressively assert executive influence in the understanding of laws.

Soon after Meese's appointment, it was clear that the Attorney General's Office would aggressively pursue new tactics in shaping the legal process and attempting to reassert the stature of the executive branch. Speaking before the conservative Heritage Foundation, Attorney General Edwin Meese III outlined just how problematic Congressional interference had become in the execution of law. Meese claimed that an "Initiative we must undertake in order to secure the true restoration of our constitutionally limited form of government is the maintenance of our basic theory of separating the powers of the national government itself. Toward this end we are seeking to resuscitate an energetic and unitary executive."^[78] Meese goes on to outline the briefs filed in the Gramm Rudman litigation and insisted that "we must curb the tendency of Congress to micromanage the executive branch."^[79] This rhetoric is consistent with political development characterization of the Reagan administration. More than a reestablishment of the executive prerogative, Alito writes of novel approaches to court attention to executive interpretation, in line of Skowronek's characterization of the Administration's desire to assert control.

INS v. Chadha, *Bowsher v. Synar*, and *Natural Resources Defense Council v. Chevron* represent a unique set of signals from the judicial branch that was unprecedented in American history. Though previous contentions over administration had increasingly gone the way of the executive with the expansion and modernization of the bureaucratic state, intervening politics had often interrupted the consolidation such executive administration and function. *INS v. Chadha* noted a firm executive prerogative immune to the legislative veto that had existed for nearly six decades. *Bowsher v. Synar* asserts that the execution of law is a function reserved for the executive and separates from the legislative power, while *Natural Resources Defense Council v. Chevron* granted a broad executive interpretation where legislation was silent. These three rulings, two of which came in suits filed by the executive branch, provided an opportunity for the White House to increase its control over bureaucratic and administrative policy in addition to providing legal justification for such actions. What remained to be seen, is precisely to what extent this interpretive function, namely, signing statements, would be used. Would

Alito's memorandum prove to be an effective strategy? Also with a triad of Supreme Court rulings providing foundation, what actions would the executive branch take to gain increased recognition for the interpretive or directive presidential signing statement? How far did principles of executive functions stretch and how much further leeway could be given?

Part Two: The institutionalization and formalization of interpretive signing statements

First steps to fulfilling the Blueprint

It may be convenient to categorize the Reagan Administration's use of signing statements as some sort of grand scheme to reawaken the "imperial presidency" of the Nixon administration. Although perhaps with popular perceptions of Reagan's aloofness, it might be characterized as though the operations of the White House were hijacked by a staff of advisors hell-bent on imposing their own will. But it important to note that this is not a zero sum game, i.e., a Nixon imperial presidency vs. a weak president captive to Congress ala Ford or Carter. That being said, this has certainly been the Congressional view of presidential administrative power, and why actions to strengthen the presidential prerogative taken by Monroe, Jackson, and the Roosevelt cousins have been met with almost immediate Congressional disapproval. Alito certainly anticipated such reactions in his memorandum, but the fallout would take a while to manifest itself, which gave the administration ample opportunity to solidify the new ground it was claiming.

Another perception that must be acknowledged is that of a presidency severely undercut by the fallout of Watergate and had less political muscle. It was a perspective held by administration figures and political observers alike, especially in the media. [80] My argument focuses less on whether the political science aspect of whether or not the presidency was less institutionally powerful, but more on the whether or not the administration itself, the public, and the Congress perceived this to be true.

The general Congressional reaction has been consistent in each statement examined, demonstrated in floor speeches, special investigations, and attempts to legislatively tie the president's hands. James K. Polk issued a signing statement though not of the directive nature which I have sought to describe. This statement was not included in this thesis because it does not provide an interpretive or directive statement about the legislation that Polk is endorsing, but Polk speculates that he might not have signed similar legislation. The stark reaction of Congress to this additional documentation is worthy of mention in its demonstration of how harsh the legislative reaction was to any alleged encroachment on legislative history and presidential interpretation of the law. Soon after Polk's message, the Congress passed a resolution calling such an action a "defacement of the public archives." [81]

Speaking before the National Press Club on February 25th, 1986, twenty days after the Alito memorandum was first circulated, Attorney General Meese stated that the administration had recently entered into a new agreement with the West Publishing Company, the primary distributor of the *United States Code, Congressional Administrative News*. The firm had previously been contracted with publishing the full text of new federal laws, the committee reports, and the general legislative history of the Congress. Meese announced that additional

documents would now be published in West Law “to make sure that the President’s own understanding of the bill is the same... or is given consideration at the time of the statutory construction later on by the court, we have now arranged with West Publishing Company that the presidential statement on the signing of the bill will accompany the legislative history from Congress so that all can be available to the court for future construction of what the statute really means.”[\[82\]](#)

The tactical importance to this action is clear. If any of the goals set out in Alito’s memorandum were to be achieved, the role of signing statements as legislative history must be widely acknowledged and distributed. Formally printing them, not just in the volumes of the president’s documents and papers, but alongside the legislative history and reports, was a key juxtaposition designed to elevate the president’s interpretation of law to a level consistent with the Supreme Court’s forthcoming decision in the *Bowsher v. Synar* case, where the president’s interpretive signing statement was cited in the majority ruling. Clearly, signing statements were on their way to becoming a part of the “public archives.”

Though Alito’s communication was an internal memorandum, the Reagan Administration Justice Department was not pursuing this course of action in absolute secrecy. Speaking to two ideologically different groups, Attorney General Meese had publicly proclaimed not only the administration’s belief on the separation of powers, but the steps that it would take to reassert the importance of the president in the legislative process. For the most part though, these statements went unnoticed, and it would take another clash before the ire of Congress would be directed toward signing statements, despite the executive branch’s unabashed signals. This was more than institutional rhetoric. As Skowronek and Wittington have argued, Meese and the Reagan administration represent another moment in reconstructive politics. Specifically, Reagan’s reconstruction followed the pattern of newly emergent executive administrations after the “discrediting” of a regime: Jackson had replaced a president without an electoral mandate, FDR a disgraced laissez faire series of presidents. After Carter, the time was ripe for a stronger executive administration. The Reagan administration embraced the opportunity to “resuscitate” the executive branch, to borrow from Meese.

Barney Frank (D-MA) has certainly been one of the most notable figures to grace the Capitol in recent decades. An unapologetic liberal, he has been a tireless advocate of modern progressive causes. In November 1986 he authored an amendment designed to protect employees from discriminatory firing, by shifting the burden of proof from the employee to the employer.[\[83\]](#) The amendment was packaged into the larger Immigration and Reform Control Act. This particular legislation was one of the most ambitious attempts by the Reagan administration to use a signing statement as an instrument of executive will and one of the Reagan administrations most controversial endorsements. The legislation, originally proposed by the president, brought about charges from the Republican Party that the legislation provided amnesty to illegal immigrants. Reagan addressed seven aspects of the bill in his signing statement. For the most part these appear to be reasonable interpretations and did not attract much attention, such as his clarification that he understands a special counsel appointment to a four-year term to be only four years and limited to reappointment. Other aspects that Reagan notes are with the administration of the law, specifically he outlines how the executive branch will carry out certain provisions that are unclear, as well as making several inconsequential Constitutional observations.[\[84\]](#)

What attracted attention then, was not the president's number of objections but rather his specific treatment of the Frank amendment. Rep. Frank's language was such that grounds for employment discrimination could be verified based on disparate treatment. However the language defining precisely what constituted disparate treatment did not make it out of conference. This left an incongruity in the bill's language that Reagan's signing statement attempted to address.

Reagan's signing statement first outlines the problem of the language discrepancy in the bill itself. His statement indicates that "the language of title VII does not have a counterpart in subsection 247B..." before going on to claim that the proper language is that of intentional "disparate treatment" and that "The meaning of the former phrase is self-evident, while the latter is taken from the Supreme Court's disparate treatment jurisprudence and thus includes the requirement of a discriminatory intent." The Reagan administration in this case makes a case for broad executive interpretation, perhaps like that acknowledged in the *Chevron* decision amidst an incident where the executive branch asserts the legislative language is less than precise. In issuing this statement, Reagan (or the OLC) accomplishes the twofold goals outlined in Alito's memorandum: the statement interprets the law via a signing statement and does so in documentation that is designed for distribution, on the heels of Meese's agreement with West Publishing.

Barney Frank was quick to criticize this executive reading claiming that the Reagan administration was simply pandering to business and instituting a lower standard for employment discrimination cases. This is the first signing statement issued by the administration that attracted Congressional attention, and it is no surprise that Frank, one of the more vocal members of the body, sought to protect a measure that he was particularly passionate about. After Reagan issued the statement, Frank immediately went on the offensive against what he saw as an executive maneuver to circumvent the legislative requirement of a bill that had been duly passed, signed, and had the full effect of law. As Frank later explained to the *Washington Post*, signing statements were the "ultimate in last licks. We play a nine inning game and then the president will get up in the 14th inning and score seven runs." [85] Earlier, Frank had described the signing statements as "intellectually dishonest" and a blatant gesture by the president to protect the business lobby by "telling them how to cheat." [86]

The legislative branch was not the only body reacting to Reagan administration's expansion of administrative power. The Supreme Court stepped back from its executive favoring trajectory in 1986, with an 8-1 decision in favor of Congress in the case of *Morrison v. Olsen*, which examined the Independent Counsel law. Scalia was the lone dissent in a case decided towards the end of Reagan's tenure that represented a step backwards for proponents of the formalistic separation of powers seemingly established by the court rulings of the early years of the administration. *Morrison v. Olsen* represents a complication of the general trend towards the strict separation of powers model, as the Court refused to invalidate the segment of the 1978 Ethics in Government Act by which Congress established the position of Independent Counsel within the Justice Department. Coming on the heels of the Watergate years and Nixon's firing of special prosecutor Archibald Cox to prevent further investigation into the executive branch, the Independent Counsel was established to investigate supposed misdeeds of the branch, and to be removable by the Attorney General only for good cause, such as a physical or mental inability to fulfill his duties. Should the independent counsel believe he was relieved without cause, he could institute a judicial review by filing suit in District of Columbia federal court.

Chief Justice Rhenquist's majority opinion primarily relies on his assertion that the line delineating superior and inferior offices is far from clear, and that the responsibilities of the independent counsel were not executive functions, in that he was not responsible for executive policy formulation. Rhenquist goes on to assert that the appointment of inferior officers is not strictly formalistic, defined and formulated. Whereas the earlier opinions represent victories for the executive branches in key elements of administrative prerogative, this decision underscores that the Court's political preference, in this case, a clear preference for legal review of executive branch actions by a counsel independent of the executive administration.

Scalia notes an inconsistency with the courts earlier rulings giving great leeway to the executive branch in administration of policy, even claiming that the court was functioning as a government of men and not of laws. Scalia believed that there was no fundamental difference in the circumstances here that did not call for the formal separation of powers model earlier set down by the Court. Rhenquist disagreed, claiming that issue was not of administration but investigation, and further that it was not strictly an executive function.^[87] Of course the Court dismissed the Nixon's administration's claims of executive privilege as being secondary to the principles of justice and the investigatory power of Congress. ^[88] This is the same philosophical element of Rhenquist's legal reasoning. This is an example of the court recognizing the shared powers of investigation as being inherent to both the legislative and executive branches. Explicitly fearing a situation such as the firing of Archibald Cox for what he found in his investigation, the Court notes its clear preference in this case for protecting inter-branch relations as critical to the functioning of American government. ^[89] The decisions cited earlier, exempted the executive branch from administrative interference, this one represents an encouragement of investigative interference, primarily due to the court's own prescription for the processes of a functioning government under the Constitution.

In the opinion of many observers, the court took a longer look at the Act and delved into the functionalities of the legislation than it had in previous instances. Such intense scrutiny, beyond the language of the statute and into the actual mechanics of the law, gave the court an opportunity to uphold the provision in favor of its consequences for the balance of powers. In layman's terms, the Court seemingly bent over backwards to protect the Independent Counsel law because of the large-scale issues at stake.^[90] The statutory language examined in the earlier decisions necessitated that the court invalidate the legislative veto. Investigative power, by contrast, was not examined under the formalistic model of separation of powers previously outlined by the Court. Instead the Court sees a larger constitutional principle at stake, that of the investigation of wrongdoing. Its reasoning is that administration of the law, i.e. the enforcement of immigration law and environmental policy, is an executive function. While the executive branch is of course the most active branch in investigation as well as administration, such investigation is not a uniquely "executive function." The legislative branch could have a role as well, and the Nixon example even necessitated that it did.

Objectives Achieved?

As much of the previous analysis has detailed, one can expect the Congress to react to presidential assertions that go beyond the previously understood range of power or seem to be at the expense of the legislative prerogative. Whether or not these statements have a rightful place and to what extent they may have a given scope is not only a legal but a political argument as well. What I have chosen to focus on in this work though, is not the "whether" question but the

“how”, that is, how have signing statements developed as an aspect of American political history, specifically in relations between the legislative and the executive branches.

Up until this point, the detailing of this thesis has focused on the circumstances, that is the existing political conditions and agendas of varying parties and why directive signing statements are produced. These more notable statements had formerly been fairly few and far between in the history of the American presidency. Such statements stand out not only because of the general rarity, but also because these statements are by nature a sort of last ditch effort: when the president has failed to influence Congress to change legislation, a signing statement can give voice to his objections. Additionally, until 1986, the rarity of these statements offer an interesting perspective into particular tensions, whether it is the control of the military in a demobilization process, the role of the federal government in internal appropriations, or the question of who determined personnel in a burgeoning bureaucratic, administrative state.

This section, like its predecessors, details the key circumstances and forces that seemed to provide an opportunity for the executive branch, But first and foremost, it chronicled a blueprint that was laid out to take advantage of just such an opportunity, Alito’s plan to make “novel” use of the signing statement as an interpretive and influential tool of the executive branch. One can imagine that other administrations had tools, strategies, and plans to assert executive prerogative, and indeed this thesis has demonstrated just how the signing statement was used to implement the political preference of the president. But one would otherwise be hard pressed to find such a direct communication. Indeed, the memorandum of a young executive branch lawyer who would later be elevated to the highest judiciary body in the United States is certainly a historical document worthy of more than a little historical note. The same might also be said of Monroe’s, Jackson’s, and the cousins Roosevelt’s signing statements. But these statements, the circumstances surrounding them, and indeed this explanation of historical existence, are only interesting because it is clear that signing statements have, to borrow Alito’s words “assume[d] their . . . place in the interpretation of legislation.” This section means very little if it were not for the following analysis, which shows that the institutionalization of signing statements has been achieved, both during the Reagan presidency and in successive administrations. The numbers speak for themselves.

Signing statements were not a formalized term until 20th century scholarship so it is difficult to quantify their usage before, though I have discussed the major ones and the non-partisan Congressional Research Service (CRS) reports that they were sparsely used.^[91] There are probably less than 20 presidential signing statements that contain objections to legislation. In 2007, the CRS issued a report that numerically demonstrated just how thoroughly ensconced of a practice the signing statement had become. Using the standard of executive legal interpretation, the CRS noted that Reagan issued 86 signing statements during his presidency that “objected to one or more statutory provisions signed into law”.^[92]

If further metric were needed to demonstrate how common the signing statement had become a part of Reagan administration executive practice, it might be fair to examine George H.W. Bush’s presidency, who of course served as the Vice President during Reagan’s tenure. Beyond the originating executive administration, the 41st president used interpretive/directive-signing statements at an even increased frequency, issuing 107 statements challenging endorsed legislation.^[93] Lest these numbers be questioned by the prospect of increased or decreased opportunity, the percentages further underscore this increase: Reagan issued 86 interpretive

statements out of 250 general endorsement proclamations, a percentage of 37% while the elder Bush registered his 107 objections out of 228 legislative signings, a reduced opportunity. [94]

In order to be truly instituted as presidential practice though, the signing statement necessarily needs to be practiced beyond administrative and partisan philosophy. The Clinton administration provides just such a test case and even a comparable demonstration of strategy: an Office of Legal Counsel Memorandum. Writing to the Attorney General, Deputy Assistant Walter Dellinger asserts that a signing statement is appropriate “If the President... exercising his independent judgment, determines both that a provision would violated the Constitution and that it is probable the Court [the Supreme Court] would agree with him.” At the core of this statement is an argument consistent with the Reagan administration’s willingness to legally interpret statutes. Essentially the same administrative and interpretive practice was accomplished by the Clinton administration as were by the Reagan administration though at an admittedly reduced (17%) [95] rate.

The second Bush administration has of course attracted the most controversy for signing statements, speculation of which will be included in the conclusion of this document relating to increased scrutiny and stake factors. What can be said beyond these qualitative aspects though is that the rate, after dipping in the Clinton administration, increased in the period leading up to 2007, which is the most recent consistent metric available. The Congressional Research Service Estimates that some 78% of his statements contain a statutory assertion. Dramatically higher than the immediately preceding administration, the George W. Bush administration simply continued the trajectory of its partisan predecessors in his usage rate. The CRS does explain though that “While the number of provisions challenged or objected to by President Bush has given rise to controversy, it is important to note that the substance of his signing statements do not appear to differ substantively by those issued by either President Reagan or Clinton.”[96]

It is clear by the numbers that signing statements are a newly entrenched practice within the executive branch and that directive statements are being issued in great number and increasing frequency. What remains to be seen though is whether or not Alito’s memorandum became a sort of self-fulfilling prophecy. Though the recognition of a signing statement in *Bowsher v. Synar*, signing statements have only been reference in one notable Supreme Court case since, *Hamdan v. Rumsfeld*, and even then it was only recognized in the minority opinion written by Justice Scalia.

Here to stay?

Then Deputy Assistant Attorney General Samuel Alito’s memorandum provided a course for the Reagan administration to reinvigorate the executive branch amidst perceptions of waning power. An amalgamation of factors proved to provide an opportunity for the executive branch to reassert its power, not the least of which was Supreme Court rulings that provided a legal foundation for the executive branch to assert itself. Such a development would not have occurred had the executive branch, specifically, the Office of Legal Counsel, not put together and executed a strategy based around a previously obscure presidential maneuver. This combination of factors is what led to the adoption of the signing statement as a routine action. Despite increased controversy under the second Bush administration and a former legislator currently occupying the Oval office, the practice of routinely challenging and interpreting legislation through signing statements has become a powerful executive tool that presidents are reluctant to concede.

This should come as no surprise. Much of this thesis has discussed how the legislative branch has attempted to influence both the policy and the administration of law in the executive branch. Inheriting a federal executive bureaucracy that was weakened in the wake of Watergate, the Reagan administration attempted to insulate itself from Congressional interference. While the court has agreed in several circumstances that the executive prerogative in administration should at times and circumstances be protected, the continued use and increase in signing statements represents an almost knee jerk reaction by the executive administration in anticipation of legal challenges. They represent a very gray and legally questionable area, introducing an admittedly new territory of executive interpretation of the law to consideration in court with varying success. Alito himself wrote that such a tactic represents a “novel” approach, and the vast numbers and scope certainly have proved to be self-fulfilling. It’s a troubling approach, that, though it has been used throughout history, attempts to fulfill a dangerous two fold purpose: the modern use of signing statements is used primarily to argue for unchecked independence of a given action, and, should legal action be instigated, attempts to preemptively influence the outcome. From a perspective of administration, it makes sense as the executive branch seeks to direct and protect its own activities. From the perspective of legal and political history, this consistent usage is a practice that has little true historical resonance. While signing statements of course have existed throughout history, Alito is right in his characterization of the what would become the standard practice as being unprecedented. Signing statements had previously been outliers, administrative maneuvers that while part of the larger purpose and scope of presidential action, were rarely used in the directive nature that I have outlined, and only then amid controversy.

While not making a legal argument per se, I based this work on the existing legal literature, which, on either side of the issue identified the few, specific signing statements of Monroe, Jackson, and the Roosevelts, to help answer my question of how they developed into a political tool. Clearly though, these are a few circumstances, and while arguments can be made for comparison sake, the increase of usage under the supervision of the Reagan administration as an institutionalized mechanism is indeed “novel.” What this means for the further political development and administrative history remains to be seen, but I hope to have contributed to a better understanding of how these statements were born of specific political circumstances and transformed into a new, powerful tool of the executive branch.

Conclusion

When I initially embarked on this project, I found my own mind and perceptions were pulled in many different, oftentimes divergent, directions. The issue of signing statements, though an increasingly prominent concern during earlier presidencies, seemed to reach its high water mark in the latter days of the George W. Bush administration. Administration officials, legislators, journalists, columnists, legal scholars, political scientists and pundits offered varying opinions. Signing statements have represented an opportunity for serious, disciplined inquiry, as well as political and legal abuse of facts.

My first exposure came in a class taught by the Honorable Lynn Rivers, a former Michigan congresswoman. Though it was a one sided introduction, this singular topic captured my curiosity with its many angles, and in further research I found my questions being multiplied rather than satisfied. What was the significance of signing statements in understanding separation of and shared powers doctrine? Legislative Supremacy? Executive prerogative? Legislative history? The role of the president in interpreting law? How had they been used before? What was the framers intent?

These questions led me to a wealth of resources associated not just with signing statements, but also with topics as far reaching as the “royal prerogative” in the pre Independence period to the modernization and building of the American state in the 20th century. The legal scholarship and the political science academy have certainly recognized these questions and attempted to answer them, but despite the many pages and works devoted to signing statements, there was a consistent void in many of the arguments that I read. Something was missing in the discourse but I couldn’t quite put my finger on it.

The study of American history has changed dramatically over the last century, in many ways as a result of the evolving contemporary context of its scholars. At its onset, it was a field captured by Germanic scholastic influences, such as Leopold von Ranke, whose careful attention to the archival records and actors birthed countless volumes that chronicled the dramatic political events and men of the past. As one friend of mine, a scholar of the Chinese Qing Dynasty expressed to me, “How many more books can be written on Lincoln? He was one man!” To catch the academy’s *esprit de corps* now is to explore social and mass history, as befitting a generation of scholars who experienced the social upheaval and transformation of American life in the 1950s-1970s.

Though a burgeoning number of Ph.D. historians are emerging from universities at an unprecedented rate, the field is largely defined by a general interest in social movements. As a pointed example, one would be hard pressed to find many military historians at the forefront of historical scholarship today. Such is the dynamic nature of disciplines; I make no quarrel with this general focus but I do believe that to some extent this shift has left a void that is being filled by other disciplines. When reading legal discussions of signing statements that are characteristic of both the legal and political science concerns with the topic, I found myself asking: How did we get here?

Historical inquiry into signing statements has served as a means to political and legal arguments, rather than an end itself. This is both for better and for worse. I’ll begin with the failures that led me to embark on this project, specifically that of the legal discipline. Precedent is a very powerful force in the Anglo-American legal system and legal scholars were eager to use the concept to buttress their arguments on the nature of the signing statement, both for and against the current usage of the procedure. What is dangerous though, is to confuse history with precedent, whereas most of the legal scholarship writes as though history and precedent are interchangeable words. The end result then, is a sort of “law office history”, though appealing in its directness and the seamless construction of argument, is not necessarily accurate or well founded in its version of past events. In this attempt at history, less attention is paid to the circumstances and considerations surrounding a given signing statement, with more emphasis being placed on the fact that the statement was in fact issued. James Monroe’s initial signing statement is reduced to a citation, rather than the product of a battle of administrative prerogatives, nuanced characters, competing philosophies and other elements of the

contemporary political context. While consideration of preceding events is key to understanding historical changes, law office history does a gross disservice to the complexities a given historical event by ignoring them.

The discipline of political science offers a better approach for historical study of signing statements. As history has shifted its paradigm, the study of American Political Development (APD), generally considered a subfield of political science, has emerged to fill the void left by this shift. APD was one of the most influential and helpful studies in my work. As its name suggests, the discipline is concerned with understanding the general and continued transformation of American political institutions. With this focus, the discipline requires a greater attention to historical study, both in the meta narrative, as well as in exploration of particular events and the consequences that followed. The line between APD and history is a difficult one to draw, especially considering the development of the sub discipline in the void left by a shift of historical interest. Such a distinction might be made in the general focus of political science on institutions and outcomes. Perhaps the best example of APD and signing statements is the work of Christopher Kelley on the Reagan administration and the institutional ascension of signing statements, and its effects on later Presidencies. Clearly this approach had previously been used during the high water mark of American history, once again making a bright line divider all the more difficult.

What then, makes this a work of history? Though political science does demonstrate institutional cause and effect, this study has looked beyond the institutions to identify the time period political contexts. More succinctly, my work examines not only the effects of the interaction of institutions but additionally takes note of the surrounding political climate and perception. This, if anything, is the work of a historical approach in its attempt to reconstruct the time and space in which a signing statement was initially used, trends that reshaped the nation and its politics, before finally explaining the institutionalization of signing statements as a matter of how. Its an avenue that relies heavily both on retrospective analysis as well as the perspectives of those living in that period. It goes beyond scientific description and attempts to describe the contextual detail and its results. It is this paradigm and dichotomous focus on present and past that is the best hope for answering my nagging question of “How did we get here?” as pertains to signing statements.

This was of the question that I had in mind after I was confronted with a truly dizzying array of perspective and opinions, few of which had clear historical explanation. It was the question that guided my work and is woven throughout this thesis. The constraints of the project may not have allowed me to answer the question comprehensively, but it is my sincere hope that the limited history I have provided might spur further questions of historical inquiry and the important question of how, as well as draw further skepticism on historical claims made by proponents of legal and political tactics whose approach may indeed be “novel.” In the robust, dynamic history of American politics, if a given practice seems novel, new, and unprecedented there is a probably a reason that it has such a characteristic. There are few “new” tricks to be had in American politics, and exploration of the new incarnations tell us not only about our current time, but reveal new details about our past.

Appendix A

Signing Statements

James Monroe, “Special Message to Congress”, January 17, 1822

To the Senate of the United States:

I nominate the persons whose names are stated in the enclosed letter from the Secretary of War for the appointments therein respectively proposed for them.

The changes in the Army growing out of the act of the 2d of March, 1821 "to reduce and fix the military peace establishment of the United States," are exhibited in the Official Register for the year 1822, herewith submitted for the information of the Senate.

Under the late organization of the artillery arm, with the exception of the colonel of the regiment of light artillery, there were no grades higher than lieutenant-colonel recognized. Three of the four colonels of artillery provided for by the act of Congress of the 2d of March, 1821, were considered, therefore, as original vacancies, to be filled, as the good of the service might dictate, from the Army corps.

The Pay Department being considered as a part of the military establishment, and, within the meaning of the above-recited act, constituting one of the corps of the Army, the then Paymaster-General was appointed colonel of one of the regiments. A contrary construction, which would have limited the corps specified in the twelfth section of the act to the line of the Army, would equally have excluded all the other branches of the staff, as well that of the Pay Department, which was expressly comprehended among those to be reduced. Such a construction did not seem to be authorized by the act, since by its general terms it was inferred to have been intended to give a power of sufficient extent to make the reduction by which so many were to be disbanded operate with as little inconvenience as possible to the parties. Acting on these views and on the recommendation of the board of general officers, who were called in on account of their knowledge and experience to aid the Executive in so delicate a service, I thought it proper to appoint Colonel Towson to one of the new regiments of artillery, it being a corps in which he had eminently distinguished himself and acquired great knowledge and experience in the late war.

In reconciling conflicting claims provision for four officers of distinction could only be made in grades inferior to those which they formerly held. Their names are submitted, with the nomination for the brevet rank of the grades from which they were severally reduced.

It is proper also to observe that as it was found difficult in executing the act to retain each officer in the corps to which he belonged, the power of transferring officers from one corps to another was reserved in the general orders, published in the Register, till the 1st day of January last, in

order that upon vacancies occurring those who had been put out of their proper corps might as far as possible be restored to it. Under this reservation, and in conformity to the power vested in the Executive by the first section of the seventy-fifth article of the general regulations of the Army, approved by Congress at the last session, on the resignation of Lieutenant-Colonel Mitchell, of the corps of artillery, Lieutenant-Colonel Lindsay, who had belonged to this corps before the late reduction, was transferred back to it in the same grade. As an additional motive to the transfer, it had the effect of preventing Lieutenant-Colonel Taylor and Major Woolley being reduced to lower grades than those which they held before the reduction, and Captain Cobb from being disbanded under the act. These circumstances were considered as constituting an extraordinary case within the meaning of the section already referred to of the Regulations of the Army. It is, however, submitted to the Senate whether this is a case requiring their confirmation; and in case that such should be their opinion, it is submitted to them for their constitutional confirmation.

JAMES MONROE.

James Monroe, "Special Message", April 13, 1822

APRIL 13, 1822.

To the Senate of the United States:

Having cause to infer that the reasons which led to the construction which I gave to the act of the last session entitled "An act to reduce and fix the peace establishment of the United States" have not been well understood, I consider it my duty to explain more fully the view which I took of that act and of the principles on which I executed the very difficult and important duty enjoined on me by it.

To do justice to the subject it is thought proper to show the actual state of the Army before the passage of the late act, the force in service, the several corps of which it was composed, and the grades and number of officers commanding it. By seeing distinctly the body in all its parts on which the law operated, viewing also with a just discrimination the spirit, policy, and positive injunctions of that law with reference to precedents established in a former analogous case, we shall be enabled to ascertain with great precision whether these injunctions have or have not been strictly complied with.

By the act of the 3d of March, 1815, entitled "An act fixing the military peace establishment of the United States," the whole force in service was reduced to 10,000 men--infantry, artillery, and riflemen--exclusive of the Corps of Engineers, which was retained in its then state. The regiment of light artillery was retained as it had been organized by the act of 3d March, 1814. The infantry was formed into 9 regiments, 1 of which consisted of riflemen. The regiments of light artillery, infantry, riflemen, and Corps of Engineers were commanded each by a colonel, lieutenant-colonel, and the usual battalion and company officers; and the battalions of the corps of artillery,

of which there were 8--4 for the Northern and 4 for the Southern division--were commanded by lieutenant-colonels or majors, there being 4 of each grade. There were, therefore, in the Army at the time the late law was passed 12 colonels belonging to those branches of the military establishment. Two major-generals and 4 brigadiers were likewise retained in service by this act; but the staff in several of its branches not being provided for, and being indispensable and the omission inadvertent, proceeding from the circumstances under which the act was passed, being at the close of the session, at which time intelligence of the peace was received, it was provisionally retained by the President, and provided for afterwards by the act of the 24th April, 1816. By this act the Ordnance Department was preserved as it had been organized by the act of February 8, 1815, with 1 colonel, 1 lieutenant-colonel, 2 majors, 10 captains, and 10 first, second, and third lieutenants. One Adjutant and Inspector General of the Army and 2 adjutants-general--1 for the Northern and 1 for the Southern division--were retained. This act provides also for a Paymaster-General, with a suitable number of regimental and battalion paymasters, as a part of the general staff, constituting the military peace establishment; and the Pay Department and every other branch of the staff were subjected to the Rules and Articles of War.

By the act of March 2, 1821, it was ordained that the military peace establishment should consist of 4 regiments of artillery and 7 of infantry, with such officers of engineers, ordnance, and staff as were therein specified. It is provided that each regiment of artillery should consist of 1 colonel, 1 lieutenant-colonel, 1 major, and 9 companies, with the usual company officers, 1 of which to be equipped as light artillery, and that there should be attached to each regiment of artillery 1 supernumerary captain to perform ordnance duty, thereby merging the regiment of artillery and Ordnance Department into these 4 regiments. It was provided also that each regiment of infantry should consist of 1 colonel, 1 lieutenant-colonel, 1 major, and 10 companies, with the usual company officers. The Corps of Engineers, bombardiers excepted, with the topographical engineers and their assistants, were to be retained under the existing organization. The former establishment as to the number of major-generals and brigadiers was curtailed one-half, and the office of Inspector and Adjutant General to the Army and of adjutant-general to each division annulled, and that of Adjutant-General to the Army instituted. The Quartermaster, Paymaster, and Commissary Departments were also specially provided for, as was every other branch of the staff, all of which received a new modification, and were subjected to the Rules and Articles of War.

The immediate and direct operation of this act on the military peace establishment of 1815 was that of reduction, from which no officer belonging to it was exempt, unless it might be the topographical engineers; for in retaining the Corps of Engineers, as was manifest as well by the clear import of the section relating to it as by the provisions of every other clause of the act, reference was had to the organization, and not to the officers of the Corps. The establishment of 1815 was reduced from 10,000 to about 6,000 men. The 8 battalions of artillery, constituting what was called the corps of artillery, and the regiment of light artillery as established by the act of 1815, were to be incorporated together and formed into 4 new regiments. The regiments of infantry were to be reduced from 9 to 7, the rifle regiment being broken. Three of the general officers were to be reduced, with very many of the officers belonging to the several corps of the Army, and particularly of the infantry. All the provisions of the act declare of what number of officers and men the several corps provided for by it should thenceforward consist, and not that

any corps as then existing or any officer of any corps, unless the topographical engineers were excepted, should be retained. Had it been intended to reduce the officers by corps, or to exempt the officers of any corps from the operation of the law, or in the organization of the several new corps to confine the selection of the officers to be placed in them to the several corps of the like kind then existing, and not extend it to the whole military establishment, including the staff, or to confine the reduction to a proportional number of each corps and of each grade in each corps, the object in either instance might have been easily accomplished by a declaration to that effect. No such declaration was made, nor can such intention be inferred. We see, on the contrary, that every corps of the Army and staff was to be reorganized, and most of them reduced in officers and men, and that in arranging the officers from the old to the new corps full power was granted to the President to take them from any and every corps of the former establishment and place them in the latter. In this latter grant of power it is proper to observe that the most comprehensive terms that could be adopted were used, the authority being to cause the arrangement to be made from the officers of the several corps then in the service of the United States, comprising, of course, every corps of the staff, as well as of artillery and infantry, and not from the corps of troops, as in the former act, and without any limitation as to grades.

It merits particular attention that although the object of this latter act was reduction and such its effect on an extensive scale, 5 new offices were created by it--4 of the grade of colonel for the 4 regiments of artillery and that of Adjutant-General for the Army. Three of the first mentioned were altogether new, the corps having been newly created, and although 1 officer of that grade as applicable to the corps of light artillery had existed, yet as that regiment was reduced and all its parts reorganized in another form and with other duties, being incorporated into the 4 new regiments, the commander was manifestly displaced and incapable of taking the command of either of the new regiments or any station in them until he should be authorized to do so by a new appointment. The same remarks are applicable to the office of Adjutant-General to the Army. It is an office of new creation, differing from that of Adjutant and Inspector General, and likewise from that of adjutant-general to a division, which were severally annulled. It differs from the first in title, rank, and pay, and from the two latter because they had been created by law each for a division, whereas the new office, being instituted without such special designation, could have relation only to the whole Army. It was manifest, therefore, that neither of those officers had any right to this new station nor to any other station unless he should be specially appointed to it, the principle of reduction being applicable to every officer in every corps. It is proper also to observe that the duties of Adjutant-General under the existing arrangement correspond in almost every circumstance with those of the late Adjutant and Inspector General, and not with those of an adjutant-general of a division.

To give effect to this law the President was authorized by the twelfth section to cause the officers, noncommissioned officers, artificers, musicians, and privates of the several corps then in the service of the United States to be arranged in such manner as to form and complete out of the same the force thereby provided for, and to cause the supernumerary officers, noncommissioned officers, artificers, musicians, and privates to be discharged from the service.

In executing this very delicate and important trust I acted with the utmost precaution. Sensible of what I owed to my country, I felt strongly the obligation of observing the utmost impartiality in

selecting those officers who were to be retained. In executing this law I had no personal object to accomplish or feeling to gratify--no one to retain, no one to remove. Having on great consideration fixed the principles on which the reduction should be made, I availed myself of the example of my predecessor by appointing through the proper department a board of general officers to make the selection, and whose report I adopted.

In transferring the officers from the old to the new corps the utmost care was taken to place them in the latter in the grades and corps to which they had respectively belonged in the former, so far as it might be practicable. This, though not enjoined by the law, appearing to be just and proper, was never departed from except in peculiar cases and under imperious circumstances.

In filling the original vacancies in the artillery and in the newly created office of Adjutant-General I considered myself at liberty to place in them any officer belonging to any part of the whole military establishment, whether of the staff or line. In filling original vacancies--that is, offices newly created--it is my opinion, as a general principle, that Congress have no right under the Constitution to impose any restraint by law on the power granted to the President so as to prevent his making a free selection of proper persons for these offices from the whole body of his fellow-citizens. Without, however, entering here into that question, I have no hesitation in declaring it as my opinion that the law fully authorized a selection from any branch of the whole military establishment of 1815. Justified, therefore, as I thought myself in taking that range by the very highest sanction, the sole object to which I had to direct my attention was the merit of the officers to be selected for these stations. Three generals of great merit were either to be dismissed or otherwise provided for. The very gallant and patriotic defender of New Orleans had intimated his intention to retire, but at my suggestion expressed his willingness to accept the office of commissioner to receive the cession of the Floridas and of governor for a short time of that Territory. As to one, therefore, there was no difficulty. For the other two provision could only be made in the mode which was adopted. General Macomb, who had signalized himself in the defense of Plattsburg, was placed at the head of the Corps of Engineers, to which he had originally belonged, and in which he had acquired great experience, Colonel Armistead, then at the head of that corps, having voluntarily accepted one of the new regiments of artillery, for which he possessed very suitable qualifications. General Atkinson, likewise an officer of great merit, was appointed to the newly created office of Adjutant-General. Brevet General Porter, an officer of great experience in the artillery, and merit, was appointed to the command of another of those regiments. Colonel Fenwick, then the oldest lieutenant-colonel of artillery, and who had suffered much in the late war by severe wounds, was appointed to a third, and Colonel Towson, who had served with great distinction in the same corps and been twice brevetted for his gallantry in the late war, was appointed to the last remaining one. General Atkinson having declined the office of Adjutant-General, Colonel Gadsden, an officer of distinguished merit and believed to possess qualifications suitably adapted to it, was appointed in his stead. In making the arrangement the merits of Colonel Butler and Colonel Jones were not overlooked. The former was assigned to the place which he would have held in the line if he had retained his original lineal commission, and the latter to his commission in the line, which he had continued to hold with his staff appointment.

That the reduction of the Army and the arrangement of the officers from the old to the new establishment and the appointments referred to were in every instance strictly conformable to law will, I think, be apparent. To the arrangement generally no objection has been heard; it has been made, however, to the appointments to the original vacancies, and particularly to those of Colonel Towson and Colonel Gadsden. To those appointments, therefore, further attention is due. If they were improper it must be either that they were illegal or that the officers did not merit the offices conferred on them. The acknowledged merit of the officers and the peculiar fitness for the offices to which they were respectively appointed must preclude all objection on that head. Having already suggested my impression that in filling offices newly created, to which on no principle whatever anyone could have a claim of right, Congress could not under the Constitution restrain the free selection of the President from the whole body of his fellow-citizens, I shall only further remark that if that impression is well founded all objection to these appointments must cease. If the law imposed such restraint, it would in that case be void. But, according to my judgment, the law imposed none. An objection to the legality of those appointments must be founded either on the principle that those officers were not comprised within the corps then in the service of the United States--that is, did not belong to the peace establishment--or that the power granted by the word "arrange" imposed on the President the necessity of placing in these new offices persons of the same grade only from the old. It is believed that neither objection is well founded. Colonel Towson belonged to one of the corps then in the service of the United States, or, in other words, of the military peace establishment. By the act of 1815-16 the Pay Department, of which the Paymaster-General was the chief, was made one of the branches of the staff, and he and all those under him were subjected to the Rules and Articles of War. The appointment, therefore, of him, and especially to a new office, was strictly conformable to law.

The only difference between the fifth section of the act of 1815 for reducing the Army and the twelfth section of the act of 1821 for still further reducing it, by which the power to carry those laws into effect was granted to the President in each instance, consists in this, that by the former he was to cause the arrangement to be made of the officers, noncommissioned officers, musicians, and privates of the several corps of troops then in the service of the United States, whereas in the latter the term troops was omitted. It can not be doubted that that omission had an object, and that it was thereby intended to guard against misconstruction in so very material and important a circumstance by authorizing the application of the act unequivocally to every corps of the staff as well as of the line. With that word a much wider range was given to the act of 1815 on the reduction which then took place than under the last act. The omission of it from the last act, together with all the sanctions which were given by Congress to the construction of the law in the reduction made under the former, could not fail to dispel all doubt as to the extent of the power granted by the last law and of the principles which ought to guide, and on which it was thereby made the duty of the President to execute it. With respect to the other objection--that is, that officers of the same grade only ought to have been transferred to these new offices--it is equally unfounded. It is admitted that officers may be taken from the old corps and reduced and arranged in the new in inferior grades, as was done under the former reduction. This admission puts an end to the objection in this case; for if an officer may be reduced and arranged from one corps to another by an entire change of grade, requiring a new commission and a new nomination to the Senate, I see no reason why an officer may not be advanced in like manner. In

both instances the grade in the old corps is alike disregarded. The transfer from it to the new turns on the merit of the party, and it is believed that the claim in this instance is felt by all with peculiar sensibility. The claim of Colonel Towson is the stronger because the arrangement of him to the office to which he is now nominated is not to one from which any officer has been removed, and to which any other officer may in any view of the case be supposed to have had a claim. As Colonel Gadsden held the office of Inspector-General, and as such was acknowledged by all to belong to the staff of the Army, it is not perceived on what ground his appointment can be objected to.

If such a construction is to be given to the act of 1821 as to confine the transfer of officers from the old to the new establishment to the corps of troops-- that is, to the line of the Army--the whole staff of the Army in every branch would not only be excluded from any appointment in the new establishment, but altogether disbanded from the service. It would follow also that all the offices of the staff under the new arrangement must be filled by officers belonging to the new establishment after its organization and their arrangement in it. Other consequences not less serious would follow. If the right of the President to fill these original vacancies by the selection of officers from any branch of the whole military establishment was denied, he would be compelled to place in them officers of the same grade whose corps had been reduced, and they with them. The effect, therefore, of the law as to those appointments would be to legislate into office men who had been already legislated out of office, taking from the President all agency in their appointment. Such a construction would not only be subversive of the obvious principles of the Constitution, but utterly inconsistent with the spirit of the law itself, since it would provide offices for a particular grade, and fix every member of that grade in those offices, at a time when every other grade was reduced, and among them generals and other officers of the highest merit. It would also defeat every object of selection, since colonels of infantry would be placed at the head of regiments of artillery, a service in which they might have had no experience, and for which they might in consequence be unqualified.

Having omitted in the message to Congress at the commencement of the session to state the principles on which this law had been executed, and having imperfectly explained them in the message to the Senate of the 17th of January last, I deem it particularly incumbent on me, as well from a motive of respect to the Senate as to place my conduct in the duty imposed on me by that act in a clear point of view, to make this communication at this time. The examples under the law of 1815, whereby officers were reduced and arranged from the old corps to the new in inferior grades, fully justify all that has been done under the law of 1821. If the power to arrange under the former law authorized the removal of one officer from a particular station and the location of another in it, reducing the latter from a higher to an inferior grade, with the advice and consent of the Senate, it surely justifies under the latter law the arrangement of these officers, with a like sanction, to offices of new creation, from which no one had been removed and to which no one had a just claim. It is on the authority of these examples, supported by the construction which I gave to the law, that I have acted in the discharge of this high trust. I am aware that many officers of great merit, having the strongest claims on their country, have been reduced and others dismissed, but under the law that result was inevitable. It is believed that none have been retained who had not, likewise, the strongest claims to the appointments which have been conferred on them. To discriminate between men of acknowledged merit, especially in a way to

affect so sensibly and materially their feelings and interests, for many of whom I have personal consideration and regard, has been a most painful duty; yet I am conscious that I have discharged it with the utmost impartiality. Had I opened the door to change in any case, even where error might have been committed, against whom could I afterwards have closed it, and into what consequences might not such a proceeding have led? The same remarks are applicable to the subject in its relation to the Senate, to whose calm and enlightened judgment, with these explanations, I again submit the nominations which have been rejected.

JAMES MONROE.

Andrew Jackson, “Special Message”, May 30, 1830

To the Senate and House of Representatives of the United States.

GENTLEMEN: I have approved and signed the bill entitled "An act making appropriations for examinations and surveys, and also for certain works of internal improvement," but as the phraseology of the section which appropriates the sum of \$8,000 for the road from Detroit to Chicago may be construed to authorize the application of the appropriation for the continuance of the road beyond the limits of the Territory of Michigan, I desire to be understood as having approved this bill with the understanding that the road authorized by this section is not to be extended beyond the limits of the said Territory.

ANDREW JACKSON

Theodore Roosevelt, “Memorandum on the Sundry Civil Bill”, March 3, 1909

The chief object of this provision, however, is to prevent the Executive repeating what it has done within the last year in connection with the Conservation Commission and the Country Life Commission. It is for the people of the country to decide whether or not they believe in the work done by the Conservation Commission and by the Country Life Commission....

If they believe in improving our waterways, in preventing the waste of soil, in preserving the forests, in thrifty use of the mineral resource of the country for the nation as a whole rather than merely for private monopolies, in working for the betterment of the condition of the men and women who live on the farms, then they will unstintedly condemn the action of every man who is in any way responsible for inserting this provision, and will support those members of the legislative branch who opposed its adoption. I would not sign the bill at all if I thought the provision entirely effective. But the Congress cannot prevent the President from seeking advice. Any future President can do as I have done, and ask disinterested men who desire to serve the people to give this service free to the people through these commissions...

My successor, the President-elect, in a letter to the Senate Committee on Appropriations, asked for the continuance and support of the Conservation Commission. The Conservation Commission was appointed at the request of the Governors of over forty States, and almost all of these States have since appointed commissions to cooperate with the National Commission. Nearly all the great national organizations concerned with natural resources have been heartily cooperating with the commission.

With all these facts before it the Congress has refused to pass a law to continue and provide for the commission; and it now passes a law with the purpose of preventing the Executive from continuing the commission at all. The Executive, therefore, must now either abandon the work and reject the cooperation of the States, or else must continue the work personally and through executive officers whom he may select for that purpose.

Theodore Roosevelt

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