

Sec. 2—Powers, Duties of the President Cl. 2—Treaties and Appointment of Officers

and an act passed both Houses on 6th May, 1796, appropriating a large sum, twenty-five thousand dollars annually, for carrying it into effect.”⁵⁰⁰

The precedent afforded by Humphreys’ appointment without reference to the Senate has since been multiplied many times,⁵⁰¹ as witness the mission of A. Dudley Mann to Hanover and other German states in 1846, of the same gentleman to Hungary in 1849, of Nicholas Trist to Mexico in 1848, of Commodore Perry to Japan in 1852, of J. H. Blount to Hawaii in 1893. The last named case is perhaps the most extreme of all. Blount, who was appointed while the Senate was in session but without its advice and consent, was given “paramount authority” over the American resident minister at Hawaii and was further empowered to employ the military and naval forces of the United States, if necessary to protect American lives and interests. His mission raised a vigorous storm of protest in the Senate, but the majority report of the committee which was created to investigate the constitutional question vindicated the President in the following terms: “A question has been made as to the right of the President of the United States to dispatch Mr. Blount to Hawaii as his personal representative for the purpose of seeking the further information which the President believed was necessary in order to arrive at a just conclusion regarding the state of affairs in Hawaii. Many precedents could be quoted to show that such power has been exercised by the President on various occasions, without dissent on the part of Congress or the people of the United States. . . . These precedents also show that the Senate of the United States, though in session, need not be consulted as to the appointment of such agents, . . .”⁵⁰² The continued vitality of the practice is attested by such names as Colonel House, the late Norman H. Davis, who filled the role of “ambassador at large” for a succession of administrations of both parties, Professor Philip Jessup, Mr. Averell Harriman, and other “ambassadors at large” of the Truman Administration, and Professor Henry Kissinger of the Nixon Administration.

How is the practice to be squared with the express words of the Constitution? Apparently, by stressing the fact that such appointments or designations are ordinarily merely temporary and for special tasks, and hence do not fulfill the tests of “office” in the strict

⁵⁰⁰ 11 T. BENTON, ABRIDGEMENT OF THE DEBATES OF CONGRESS 221 (1860).

⁵⁰¹ S. Misc. Doc. 109, 50th Congress, 1st Sess. (1888), 104.

⁵⁰² S. REP. NO. 227, 53d Congress, 2d Sess. (1894), 25. At the outset of our entrance into World War I President Wilson dispatched a mission to “Petrograd,” as it was then called, without nominating the Members of it to the Senate. It was headed by Mr. Elihu Root, with “the rank of ambassador,” while some of his associates bore “the rank of envoy extraordinary.”