

Sec. 3—Legislative, Diplomatic, and Law Enforcement Duties of the President

removable by the President if he is to perform his duties.⁷²⁹ On the other hand, Congress may believe that it is necessary to protect the tenure of some officials, and if it has good reasons not limited to invasion of presidential prerogatives, it will be sustained, provided the removal restrictions are not of such a nature as to impede the President's ability to perform his constitutional duties.⁷³⁰ The officer in *Morrison*, the independent counsel, had investigative and prosecutorial functions, purely executive ones, but there were good reasons for Congress to secure her tenure and no showing that the restriction "unduly trammels" presidential powers.⁷³¹

The "bright-line" rule previously observed no longer holds. Now, Congress has a great deal more leeway in regulating executive officials, but it must articulate its reasons carefully and observe the fuzzy lines set by the Court.

Power of the President to Guide Enforcement of the Penal Law.—This matter also came to a head in "the reign of Andrew Jackson," preceding, and indeed foreshadowing, the Duane episode by some months. "At that epoch," Wyman relates in his *Principles of Administrative Law*, "the first amendment of the doctrine of centralism in its entirety was set forth in an obscure opinion upon an unimportant matter—The Jewels of the Princess of Orange, 2 Opin. 482 (1831). These jewels . . . were stolen from the Princess by one Polari and were seized by the officers of the United States Customs in the hands of the thief. Representations were made to the President of the United States by the Minister of the Netherlands of the facts in the matter, which were followed by a request for return of the jewels. In the meantime the District Attorney was prosecuting condemnation proceedings in behalf of the United States which he showed no disposition to abandon. The President felt himself in a dilemma, whether if it was by statute the duty of the District Attorney to prosecute or not, the President could interfere and direct whether to proceed or not. The opinion was written by Taney, then Attorney General; it is full of pertinent illustrations as to the necessity in an administration of full power in the chief executive as the concomitant of his full responsibility. It concludes: If it should be said that, the District Attorney having the power to discontinue the prosecution, there is no necessity for inferring a right in the President to direct him to exercise it—I answer that the direction of the President is not required to communicate any new authority to the District Attorney, but to direct him in the execution of a power he is admitted to possess. The most valuable and proper measure may

⁷²⁹ 487 U.S. at 690–91.

⁷³⁰ 487 U.S. at 691.

⁷³¹ 487 U.S. at 691–92.