in that Congress had laid down specific procedures for the President to follow, which he had declined to follow.[794]

Despite the opinion of the Court, therefore, it seems clear that four of the six Justices in the majority were more moved by the fact that the President had acted in a manner considered and rejected by Congress in a field in which Congress was empowered to establish the rules—rules the President is to see faithfully executed—than with the fact that the President's action was a form of "lawmaking" in a field committed to the province of Congress. The opinion of the Court, therefore, and its doctrinal implications must be considered with care, as it is doubtful that the opinion lays down a constitutional rule. Whatever the implications of the opinions of the individual Justices for the doctrine of "inherent" presidential powers—and they are significant—the implications for the area here under consideration are cloudy and have remained so from the time of the decision.[795]

PRESIDENTIAL IMMUNITY FROM JUDICIAL DIRECTION

In *Mississippi v. Johnson*,[796] in 1867, the Court placed the President beyond the reach of judicial direction, either affirmative or restraining, in the exercise of his powers, whether constitutional or statutory, political or otherwise, save perhaps for what must be a small class of powers that are purely ministerial.[797] An application for an injunction to forbid President Johnson to enforce the Reconstruction Acts, on the ground of their unconstitutionality, was answered by Attorney General Stanberg, who argued, *inter alia*, the absolute immunity of the President from judicial process.[798] The Court refused to permit the filing, using language construable as mean-

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[794] 343 U.S. at 662, 663.

[795] In Dames & Moore v. Regan, 453 U.S. 654, 668–69 (1981), the Court recurred to the *Youngstown* analysis for resolution of the presented questions, but one must observe that it did so saying that "the parties and the lower courts . . . have all agreed that much relevant analysis is contained in" *Youngstown*. *See also* id. at 661–62, quoting Justice Jackson's *Youngstown* concurrence, "which both parties agree brings together as much combination of analysis and common sense as there is in this area."

[796] 71 U.S. (4 Wall.) 475 (1867).

[797] The Court declined to express an opinion "whether, in any case, the President of the United States may be required, by the process of this court, to perform a purely ministerial act under a positive law, or may be held amenable, in any case, otherwise than by impeachment for crime." 71 U.S. at 498. *See* Franklin v. Massachusetts, 505 U.S. 788, 825–28 (1992) (Justice Scalia concurring). In NTEU v. Nixon, 492 F.2d 587 (D.C. Cir. 1974), the court held that a writ of mandamus could issue to compel the President to perform a ministerial act, although it said that if any other officer were available to whom the writ could run it should be applied to him.

[798] Mississippi v. Johnson, 71 U.S. (4 Wall.) 475, 484–85 (1867) (argument of counsel).