

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

departments, even though in pursuance of powers conferred by statute on the President, do not even refer to the President.⁶⁹⁹

Impoundment of Appropriated Funds

In his Third Annual Message to Congress, President Jefferson established the first faint outline of what years later became a major controversy. Reporting that \$50,000 in funds which Congress had appropriated for fifteen gunboats on the Mississippi remained unexpended, the President stated that a “favorable and peaceful turn of affairs on the Mississippi rendered an immediate execution of the law unnecessary. . . .” But he was not refusing to expend the money, only delaying action to obtain improved gunboats; a year later, he told Congress that the money was being spent and gunboats were being obtained.⁷⁰⁰ A few other instances of deferrals or refusals to spend occurred in the Nineteenth and early Twentieth Centuries, but it was only with the Administration of President Franklin Roosevelt that a President refused to spend moneys for the purposes appropriated. Succeeding Presidents expanded upon these precedents, and in the Nixon Administration a well-formulated plan of impoundments was executed in order to reduce public spending and to negate programs established by congressional legislation.⁷⁰¹

Impoundment⁷⁰² was defended by Administration spokesmen as being a power derived from the President’s executive powers and particularly from his obligation to see to the faithful execution of

⁶⁹⁹ 38 Ops. Atty. Gen. 457, 458 (1936). And, of course, if the President exercises his duty through subordinates, he must appoint them or appoint the officers who appoint them, *Buckley v. Valeo*, 424 U.S. 1, 109–143 (1976), and he must have the power to discharge those officers in the Executive Branch, *Myers v. United States*, 272 U.S. 52 (1926), although the Court has now greatly qualified *Myers* to permit congressional limits on the removal of some officers. *Morrison v. Olson*, 487 U.S. 654 (1988).

⁷⁰⁰ 1 J. Richardson, *supra* at 348, 360.

⁷⁰¹ History and law is much discussed in *Executive Impoundment of Appropriated Funds: Hearings Before the Senate Judiciary Subcommittee on Separation of Powers*, 92d Congress, 1st Sess. (1971); *Impoundment of Appropriated Funds by the President: Hearings Before the Senate Government Operations Ad Hoc Subcommittee on Impoundment of Funds*, 93d Congress, 1st Sess. (1973). The most thorough study of the legal and constitutional issues, informed through historical analysis, is Abascal & Kramer, *Presidential Impoundment Part I: Historical Genesis and Constitutional Framework*, 62 GEO. L. J. 1549 (1974); Abascal & Kramer, *Presidential Impoundment Part II: Judicial and Legislative Response*, 63, *id.* at 149 (1974). See generally L. FISHER, *PRESIDENTIAL SPENDING POWER* (1975).

⁷⁰² There is no satisfactory definition of impoundment. Legislation enacted by Congress uses the phrase “deferral of budget authority” which is defined to include: “(A) withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or (B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority, including authority to obligate by contract in advance of appropriations as specifically authorized by law.” 2 U.S.C. § 682(1).