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Signing Statements & Executive Orders: Obama's Tyrannical Tack

The New York Times reported February 12 that President Obama was fed up trying to convince, cajole, and compromise with the Republican Party in order to garner its rubber-stamp enshrinement of his legislative legacy. So, in his exasperation, he will contradict himself yet again and begin ruling by fiat.

Although candidate and erstwhile populist Candidate Obama criticized (and rightly so) former President Bush for his dictatorial usurpation of legislative power via the signing statement, President Obama's own personal experience with the mounting congressional resistence to his agenda has given him second thoughts about the utility of these controversial codas.

As was further reported by *The New American*, President Obama has decided to sidestep congressional impediments to the achievement of his legislative goals by using executive orders and signing statements.

A presidential signing statement is a pronouncement that the president appends to a bill he signs into law. Nowadays, this executive addendum sets forth the President's understanding of the law and gives guidance to the myriad departments under the executive branch umbrella on how to carry out the requirements of the new legislation.

Signing statements change the laws, revoking parts of them or adding provisions to them, at the same time redefining the Constitution and nullifying its checks and balances. Using them, the President assumes all power — executive, legislative, and judicial — unto himself and does so in a manner that is beyond question, beyond debate, beyond vote, and thus beyond the reach of the American people.

Constitutionally speaking, if a President does not like a piece of legislation, the only recourse allowed him is a veto. Modern Presidents, however, have two self-perpetuating habits that obviate the use of veto: engorging themselves with power not delegated to them by the Constitution and disregarding the Constitution altogether.

Given the recent run of success that previous Presidents have enjoyed with "signing statement as law of the land" gambit, it is easy to understand why a President zealous for the codification of his own vision would not want to risk public scrutiny that would accompany a veto. After all, why go to all that bother when a president can accomplish the same end by issuing a signing statement that will never be discussed? Thus, he sits quietly and victoriously in the dark solitude of the Oval Office having his monarchical cake and eating it, too.

As is common to executive mouthpieces, President Obama's shills have tried to veil their boss's unconstitutional sleight of hand behind the cloak of history. A brief sketch of the history of early uses of the presidential signing statement will show that in our Republic's infancy, Presidents used signing statements for rather benign reasons: thanking supporters, nods to constituents, or communicating executive favor or disfavor. When these Presidents did try to impose their will through signing statements, however, Congress appropriately reasserted its exclusive right to legislate, and chastised the offending executives.

Andrew Jackson, a lightning rod to controversy, issued a controversial signing statement. In a bill authorizing construction of new roads and the improvement of existing roads, Congress included a provision dealing with internal improvements, a matter Jackson believed was under the exclusive jurisdiction of the states. In his signing statement, Jackson mandated that the road not extend beyond the territorial boundaries of Michigan. Congress rebuffed Jackson's attack, calling his statement a de facto unconstitutional line item veto. (Despite the House of Representatives' defense, however, Congress eventually caved, and Jackson's direction was followed.)

President John Tyler received a stern rebuke from the House of Representatives after he issued a signing statement questioning the constitutionality of a bill apportioning congressional districts. The House of Representatives reacted quickly and sharply in a response authored by John Quincy Adams demanding that Tyler's signing statement "be regarded in no other light than a defacement of the public records and archives." For the most part, this forceful congressional reproof scared future presidents straight with regard to the issuing of controversial signing statements.

One has to look to more modern presidents, such as Franklin Roosevelt, to find an example of Congress acquiescing to a president seeking to abuse the use of a signing statement.

Franklin Roosevelt, facing perhaps the most milquetoast Congress of the modern era, removed all obstacles that impeded his program to drag the United States into the mire of his socialistic New Deal scheme. In a signing statement attached to the Emergency Price Control Act of 1942, which contained a provision he opposed that was intended to protect American farmers, Roosevelt adamantly declared, "There is nothing contained therein which can be construed as a limitation upon the existing powers of governmental agencies, such as the Commodity Credit Corporation, to make sales of agricultural commodities in the normal conduct of their operations."

In addition to this edict, Roosevelt promised Congress that if it did not remove the "offensive" portion of the bill, he would ignore it and treat it as nonexistent and inapplicable to his administration. Congress capitulated, and the protection for American farmers was removed from the bill. Roosevelt was supported by a sympathetic legal adviser who assured him that if he decided "that a certain course of action is essential as a war measure, it supersedes congressional action."

Signing statements gained teeth with the aid of a lackluster, inattentive Supreme Court. In the case of *United States v. Lovett* (1946), the Court agreed with Roosevelt's signing statement that the Urgency Deficiency Appropriations Act of 1943 contained restrictions on his management of the executive branch and struck down the restrictions citing the signing statement; the Court accepted Roosevelt's signing statements as persuasive and held in dictum that presidential signing statements merited consideration and mention in their decision.

Congressional complacency married with judicial complicity produced an evil offspring that erased the checks and obliterated the balances.

Presidential signing statements *are* "cherry-picking" the parts of a law that presidents wish to follow or ignore. The uses that signing statements have been put to since they began to flourish in earnest during the Reagan administration show that no matter the "getting things done" tenor used to pronounce them by an ostensibly frustrated President, their clear intent is to subvert the law and slam the weighty wrecking ball of "executive discretion" into the paper barricades that divide the three provinces of power.

The principal promoter of this new, albeit unconstitutional, definition of the separation of powers was Reagan's Attorney General, Edwin Meese, III. He and his cohorts in the "conservative" Reagan administration set their sights on the Constitution in order to "provide an opportunity for the chief executive to participate more actively in the creation of legislation than the mere decision to sign or veto bills transmitted from the Congress." These are Meese's own words!

Article II, Section 3 of the Constitution — called the "Take Care" clause of the Constitution, wherein the president is charged with a duty to "take care that the laws be faithfully executed" — was used as justification for overruling congressional acts. If a part of a law doesn't jibe with the President's notion of his constitutional role, then rather than veto a bill and throw the baby out with the bathwater, the President interlineates his own language into the bill — thus directing the bureaucrats tasked with implementing the provisions of the law to do so according to the President's definition of "constitutional," rather than according to the express will of the people as manifested through the actions of their elected representatives. With every one of these statements or executive orders, then, the President elevates his mind and will above that of the people, Congress, and the courts. And he does so to the detriment of the constitutional health of our republic.

Attorney General Meese was not the only faithful foot soldier of the Reagan Revolution. Supreme Court Justice Samuel Alito, Jr., while working as a lawyer in the Reagan Justice Department, provided President Reagan with "constitutional" justification for his boss's official disdain for congressional authority to limit executive dominion. In a memo from the Office of Legal Counsel to the White House, Alito argued that "since the President's approval [of a bill] is just as important as that of the House or Senate, it seems to follow that the President's understanding of the bill should be just as important of that of Congress." He goes on to assert that when interpreting a statute, a court should give equal weight to the letter of the law and the president's understanding of the letter of the law as contained in the presidential signing statement accompanying the bill, ignoring the fact that such a consideration by the courts would disrupt the balance of power and throw the government into chaos.

With all due respect to White House Chief of Staff Rahm Emanuel's masterful and jester-worthy juggling of historical facts to misdirect the attention of otherwise wary Americans, another more appropriate focus of historical research would be to ponder the words and warnings of our Founding Fathers and their political and philosophical influences regarding the primacy of the separation of powers in a good government.

James Madison, writing as "Publius," wrote in *The Federalist*, No. 47: "The accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny. " Madison himself was restating in his inimitable style, one facet of federalism that was universally considered to be an essential pillar of liberty.

As the venerable French philosopher Baron de Montesquieu wrote in his influential treatise *l'Esprit des Lois* (The Spirit of the Laws), "When the legislative and executive powers are united in the same person,

or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner."

"Centinel," the nom de guerre of an anti-Federalist opposed to ratifying the new Constitution, rephrased for his readers what was already, in the 18th Century, a well-settled aspect of good government, "This mixture of the legislative and executive moreover highly tends to corruption. The chief improvement in government, in modern times, has been the complete separation of the great distinctions of power; placing the legislative in different hands from those which hold the executive."

Another anonymous anti-Federalist commented, "Liberty therefore can only subsist, where the powers of government are properly divided, and where the different jurisdictions are inviolably kept distinct and separate."

If the opinions of these men are a worthy metric of the size of the impending threat of despotism, then President Obama is filling the shoes of a tyrant heel to toe. And his decision to unilaterally demolish the walls of history, law, and constitutional enumerations that separate the executive and legislative powers is an early and reliable bellwether of his intent to persist down the path of despotism by decree so well trod by many of his forerunners.

Combine this insult of presidential hubris and imperious congressional disregard to the injury of his threat to sneak his nominees into the executive branch's backdoor without the inconvenience of congressional advice and consent via the use of recess appointments ("we can't allow politics to stand in the way of a well-functioning government"), and it should be clear that President Obama is establishing himself as a avowed and open enemy of republican government and a fearsome executive determined to amass governmental power into his own (or a successor's) hands.

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