



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 6: The Civil War/Reconstruction Era – Separation of Powers

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Note on the Impeachment of Andrew Johnson

Andrew Johnson was the first president to face impeachment by the Senate. The roots of that impeachment lay in Republican efforts to broaden their political coalition during the Civil War. Eager to present a united front against the Confederates, Republicans renamed themselves the Union Party and actively sought support from former Democrats who were committed to fighting until the Confederate army surrendered. Placing Andrew Johnson on the ticket as vice president was the most important step Lincoln and his political allies took to secure this broader support. Andrew Johnson had served Tennessee as a Jacksonian Democrat in a variety of offices, from the state legislature to the governorship, during the years preceding the Civil War. Johnson was serving in the Senate of the United States when Tennessee seceded. Unlike many of his southern colleagues, he chose to remain in Washington, D.C., rather than return to his home state and join the Confederate cause. Johnson's dedication to the Union and his antipathy to the large slaveowners, whom he blamed for secession, led President Lincoln to appoint him as the military governor of Tennessee when the state was retaken by the Union army in 1862. Needing to persuade Democrats to cross party lines in order to win reelection, Lincoln added Johnson to the presidential ticket of the "Union Party" in 1864. When Lincoln was assassinated days after Robert E. Lee's surrender at Appomattox, Johnson became the president.

Conflicts broke out between the former Jacksonian Johnson and the Republican majority in both the houses of Congress almost immediately after Johnson assumed the presidency. Rather than calling Congress into session early, Johnson oversaw the end of the war and the beginning of peace on his own. Following what he took to be Lincoln administration policy and constitutional requirements, Johnson sought to restore the seceding states to the union as soon as possible. He regarded secession as the treasonous plot of a few powerful slaveholders who had overthrown lawful government in the states. Using the threat of treason trials and the carrot of presidential pardons, Johnson induced southern political leaders to swear loyalty to the Union, ratify the Thirteenth Amendment outlawing slavery, and reorganize state governments. By the time Congress came into session in late 1865, southerners had held elections for state and federal offices and expected to reenter national political life.

Republicans in Congress had other plans. They refused to seat the representatives from the former Confederate states and launched their own investigations into the situation in the South. By February 1866, the president had broken with Congress. He accused Radical Republicans of being as hostile to the inherited Constitution as the secessionists. Johnson successfully vetoed the first major piece of Reconstruction legislation, the Freedmen's Bureau Bill, which was designed to provide assistance to the former slaves and dispose of "abandoned" or confiscated land in the South. His veto of the Civil Rights Act of 1866 was overridden. Breaking with presidential tradition, Johnson hit the campaign trail during the midterm elections of 1866, trying to drum up support for his conservative understanding of Reconstruction. This effort was a dramatic failure. Republicans in 1866 gained a veto-proof majority in both Houses of Congress and began the process of Reconstruction over the president's objections and obstruction.

The new Congress immediately challenged Johnson's authority to shape Reconstruction. The Republican majority launched military Reconstruction, imposing martial law in the South and dismantling the civilian governments. Federal officials in the South were directed to make decisions without presidential input. General Ulysses S. Grant was put in charge the army's operations in the



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South, and Congress directed that all presidential orders go through Grant. Congress passed federal statutes that prevented the president from removing or transferring military officers, including Grant. The Tenure of Office Act protected civilian executive branch officials from being removed from office without the consent of the Senate. Johnson believed that these restrictions on the power of the president were unconstitutional.

The new Congress also sought to prevent presidential interference with Reconstruction by removing Johnson from office. The House of Representatives in 1867 launched three impeachment investigations, but none mustered a majority in that chamber. In February 1868, Johnson removed Secretary of War Edwin Stanton (a Lincoln appointee) without the prior approval of the Senate. This decision violated the recently adopted Tenure of Office Act, which Johnson believed unconstitutional. Stanton's removal provided the boost that impeachment forces needed. Johnson was quickly impeached on a party line vote in the House. Nine articles of impeachment turned on his violation of the Tenure of Office Act, a tenth charged him with impeachable offenses for trying to call Congress into public contempt before the election of 1866, and an eleventh charged him with general resistance to congressional policies. If two-thirds of the Senate agreed, Johnson would be removed from office. The Radical Republican and president *pro tempore* of the Senate Benjamin Wade would ascend to the Oval Office (since the vice presidency had been vacant since Lincoln's death).

Controversies over Reconstruction fueled the Johnson impeachment, even though such matters were rarely explicitly addressed during the actual impeachment debates. Senator Simon Cameron told his Pennsylvania constituents that Johnson had not been "fit to become President. . . . Why suffer him to remain there if we can put him out?" Massachusetts Senator Charles Sumner took a broad view of the impeachment power, putting the burden on the president to prove that his "continuance in office is not inconsistent with the *Public Safety*."¹ Both the congressional Republicans and the president feared a renewal of the Civil War if the other set the terms for Reconstruction. Johnson accused Republicans of establishing General Grant as a second commander in chief and instituting repressive measures in the South. Republicans accused Johnson of questioning the legitimacy of the "rump Congress" and inviting resistance to congressional Reconstruction in the South.

The impeachment managers from the House of Representatives and the defense attorneys representing the president offered distinctive visions of both the presidency and the impeachment power during President Johnson's impeachment trial before the Senate. The House managers championed legislative supremacy. They maintained that the "sovereign power in this republic is the Congress of the United States" and that the national legislature was given the "controlling influence . . . even to regulating the executive and the judiciary." The president's function was to "follow and enforce the legislative will," nothing more.² Republican proponents of impeachment insisted that impeachment was a political decision. They regarded "the high court of impeachment" as "the highest court known to the Constitution of the Republic" and the only appropriate tribunal for resolving the political and constitutional disagreements between the president and the Congress.³ Representative Benjamin Butler, a former army general and Republican leader, declared that "any malversation in office, highly prejudicial to the public interest, or subversive of some fundamental principle of government by which the safety of a people may be in danger, is a high crime against the nation" and justification for impeachment and removal. Impeachment was a political inquest to evaluate "political offenses," not merely the violation of a law.⁴

The president's defenders maintained that the impeachment of Johnson was a grave threat to the independence of the executive branch. Former Supreme Court Justice Benjamin Curtis and other members of Johnson's legal team insisted that the Reconstruction Congress was interfering with "the necessary means and instruments of performing the executive duty expressly imposed on [the president]

¹ Quoted in Keith E. Whittington, *Constitutional Construction* (Cambridge, Mass.: Harvard University Press, 1999), 142, 151.

² *Trial of Andrew Johnson, President of the United States, Before the Senate of the United States, on Impeachment by the House of Representatives for High Crimes and Misdemeanors*, 2 vols. (Washington, D.C.: Government Printing Office, 1868), 2:28, 2:228, 1:685.

³ *Congressional Globe*, 40th Cong., 2nd sess. (1868), 1387.

⁴ *Trial of Johnson*, 1:88-89, 3:253.



by the Constitution of taking care that the laws be faithfully executed." By insulating the military and civilian officers of the executive branch from the command of the president, Congress was erecting "a new Executive" that exercised the executive power that Article II of the Constitution had vested in the president alone. The president, Johnson and his lawyers declared, was the "tribune of the People," who alone represented the nation as a whole.⁵ The president was the "chief executive officer of the land" with distinctive rights and duties under the Constitution, not the "passive instrument of Congress." President Johnson's defenders regarded the congressional power of impeachment as limited to purely legal questions. During an impeachment, they insisted, the House and Senate had to give up their character as legislative bodies that made new law and sit in a "judicial capacity" free from "party spirit" and constrained by law. The president was accountable to the electorate for his political failings. He was impeachable only for committing serious violations of the ordinary criminal law that applied to every citizen.⁶

The Senate voted on only three of the eleven articles of impeachment lodged against the president. Each received an identical thirty-five to nineteen vote. This was one short of the two-thirds majority necessary to convict and remove Johnson. Seven Republican senators crossed party lines to vote against conviction. They spoke for a larger bloc of moderate Republicans who wished to send a strong message to Johnson but were leery of permanently damaging the presidency by removing him from office.

Johnson and his successors got the message. Johnson had previously communicated to moderates that he would stop resisting congressional Reconstruction, leaving administrative matters in the hands of General Grant, who during the impeachment process was nominated for the presidency by the Republican Party. Upon winning election in 1868, Grant promptly professed that he regarded the presidency as "a purely administrative officer."⁷ Johnson served out the rest of his term quietly and in political irrelevance.

The failed impeachment of Andrew Johnson had long-term consequences for American efforts to achieve racial equality. Johnson successfully stalled Reconstruction during the years immediately after the Civil War when northern support for the rights of persons of color peaked. When Johnson in 1868 finally agreed to accept Republican policy, the window for substantially reconstructing southern politics was closing. Northern opposition to black civil rights and Republican rule in the South increased significantly after 1866. The Republican share of the national vote dropped sharply during elections held in 1867 and 1868. By the end of Johnson's term of office, many Republicans had moderated their commitment to securing racial justice in the South. Almost one hundred years would pass before congressional majorities were as committed as Republicans were in 1866 to improving the lot of persons of color.

The failed impeachment also had long-term consequences for the impeachment process and the balance of power between the national legislature and national executive. Nineteenth century Americans recognized that the Senate's failure to convict Johnson did not vindicate his policies or his presidency. Johnson was disciplined and his actions repudiated, even if he was not removed. The Senate majority found a path between the competing views of the impeachment power offered by House Republicans and Johnson's lawyers. The impeachment power would be available to check abuses of office but was not to be used to remove incompetent or disagreeable presidents. The House impeachment team received more support from the Senate when they championed the idea of a weak president primarily dedicated to implementing the will of Congress. Johnson's failed presidency contributed to the birth of an era of "congressional government." Decades would pass before presidents began to reassert a Jacksonian vision of a strong national executive armed with inherent powers to take decisive action.

⁵ *Trial of Johnson*, 1:39; 1:207; Edward McPherson, *The Political History of the United States of America during the Period of Reconstruction* (Washington, D.C.: Solomons and Chapman, 1875), 172.

⁶ *Trial of Johnson*, 2:166, 2:136, 1:377.

⁷ McPherson, 365.