



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 5: The Jacksonian Era – Separation of Powers

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House Debate on the Veto Power (1842)¹

After William Henry Harrison died, Vice President John Tyler (1790–1862) ascended to the presidency. Tyler was a Jeffersonian Old Republican who had broken with Jackson over the administration's handling of nullification and the removal of the deposits from the Bank. Regarding the "exercise of some independence of judgment" as the responsibility of holding office, Tyler resolved as president to carry out the duties of his office as he understood them.² He vetoed bills that would revive the Bank of the United States, impose protective tariffs, and provide federal funding for internal improvements. Although Whigs held majorities in both chambers of Congress when Tyler first took office, they did not have the votes needed to override a presidential veto.

After Tyler vetoed a second tariff bill, former president John Quincy Adams, now serving in the House of Representatives, moved that the veto be referred to a select committee chaired by Adams. The House complied. Adams produced a report denouncing Tyler's use of the veto power and reaffirming Whig commitments to legislative supremacy in policymaking. The report called for Tyler's impeachment and a constitutional amendment allowing a simple majority in both Houses of Congress to override a presidential veto. Both recommendations failed. Are there circumstances under which the use of the presidential veto would be inappropriate? Does the president ever have an obligation to defer to the legislative majority?

Majority Report delivered by John Quincy ADAMS (Whig, Massachusetts)

....
 In the spirit of the Constitution of the United States, the executive is not only separated from the legislative power, but made dependent upon, and responsible to it. Until a very recent period of our history, all print, in either house of Congress, to the opinions or wishes of the President, relating to any subject in deliberation before them, was regarded as an outrage upon the rights of the deliberative body, among the first of whose duties it is to spur the influence of the dispenser of patronage and power. Until very recently, it was sufficient greatly to impair the influence of any member to be suspected of personal subserviency to the Executive; and any allusion to his wishes, in debate, was deemed a departure not less from decency than from order. . . .

. . . [T]he measures among those deemed by the Legislature of the Union indispensably necessary for the salvation of its highest interests, and for the restoration of its credit, its honor, its prosperity, was prostrated, defeated, annulled, by the weak and wavering obstinacy of one man, accidentally, and not by the will of the people, invested with that terrible power—as if prophetically described by one of his own chosen ministers, at this day, as "the right to deprive the people of self-government."

....
 They perceive that the whole legislative power of the Union has been, for the last fifteen months, with regard to the action of Congress upon measures of vital importance, in a state of suspended animation, strangled by the *five* times repeated stricture of the executive cord. They observe that, under these unexampled obstructions to the exercise of their high and legitimate duties, they have hitherto preserved the most respectful forbearance towards the executive chief; that while he has, time after time,

¹ Excerpt taken from *Report on Veto of New Tariff of Duties*, 27th Cong., 2nd sess., August 16, 1842, H.R. Rept. 998.

² John Tyler, "Veto Message, August 9, 1842," in *A Compilation of the Messages and Papers of the Presidents*, ed. James D. Richardson, vol. 5 (New York: National Bureau of Literature, 1897), 2037.



annulled, by the mere act of his will, their commission from the people to enact laws for the common welfare, they have forborne even the expression of their resentment for these multiplied insults and injuries. They believed they have a high destiny to fulfill, by administering to the people, in the form of law, remedies for the suffering which they had too long endured. The will of one man had frustrated all their labors, and prostrated all their powers. The majority of the committee believed that the case has occurred, in the annals of our Union, contemplated by the founders of the Constitution by the grant to the House of Representatives of the power to impeach the President of the United States; but they are aware that the resort to that expedient might, in the present condition of public affairs, prove abortive. They see that the irreconcilable difference of opinion and of action between the legislative and executive department of the document is but sympathetic with the same discordant views and feelings among the people. To them alone the final issue of the struggle must be left. . . .

. . . . [T]he abusive exercise of the constitutional power of the president to arrest the action of Congress upon measures vital to the welfare of the people, has wrought conviction upon the minds of the majority of the committee, that the veto power in itself must be restrained and modified by an amendment of the Constitution itself: a resolution for which they accordingly herewith respectfully report.

. . . .
 Instead of the words "two-thirds," twice repeated in the second paragraph of the said seventh section [of Article I], substitute, in both cases, the words "a majority of the whole number."

Protest and Counter Report of Thomas W. GILMER (Whig, Virginia)

. . . .
 Under the specious pretext of defending Congress from what is imagined to be an attack on their constitutional right, it is sought to strip the other departments of Government of powers which the Constitution has been confided to them; to remove every constitutional obstruction to the arbitrary will of Congress; to destroy the equilibrium of our well-considered system of government; and to assume unlimited jurisdiction, not only over the co-ordinate branches, but over the States and the people. Encouraged by the present embarrassed condition of the country and our public affairs, deriving fresh political hopes from the general gloom and despondency which their own proceedings have cast over the union, it is attempted to extort from the sufferings of the people some sanction for principles of government which their judgment has never failed to repudiate. The history of our Government abounds in examples of conflicts between the several departments. It has sometimes happened that all the departments combined to overthrow Constitution, and, but for the intelligence of the people, and the controlling power of the suffrage, in restoring the supremacy of the Constitution over the Legislature, the Executive, and the Judiciary, such combinations must have been fatal to our institutions. While it is the privilege and the duty of every citizen to arraign either department of the government, or any public officer, for infidelity to the Constitution and the laws, it is neither wise, just, nor patriotic, for one of those departments to impair the confidence or the harmony which should subsist between the separate branches of the public service, by fomenting prejudices and discord. They are all agent of the people. Their duties are prescribed by a law which all acknowledge as supreme.

. . . . Zeal in the pursuit of some cherished object of interest or ambition induces some men not only to complain when they are thwarted by what they easily believe to be an improper exercise of power, but to make war on the established forms of government, and to seek, by revolution or radical change, what they cannot lawfully obtain. The disposition, which has been recently manifested to some extent, to disturb the well-adjusted checks of the Constitution, by claiming powers for Congress which that instrument does not confer, or by denying to a co-ordinate branch of Government powers which it does confer, in order to establish a particular system of party policy, or to carry an election, must be regarded with deep regret and serious apprehension by the people--those whose province it is to judge, and who, free from the bias of mere party politics, can think and feel and act under the superior influences of patriotism. Our government has survived the shock of many severe political contests, because hitherto to these contests have involved only a difference of opinion as to the principal and



policy of the Government, as organized. It has been deemed unwise, as well as dangerous, to exasperate local or general prejudices against the acknowledged forms of Government, and to enlist the spirit of revolution as an auxiliary to the spirit of party.

....

Has the president either assumed a power which does not belong to his office, or has he abused a power which does belong to it? It has not been denied that the power in question exist under the Constitution. Indeed, it has been proposed to abolish it by amendment. If it has been abused, it was done either corruptly and wantonly, or under an error of Executive judgment. If there is evidence of the least corruption in the President's conduct, he should be impeached. The power of impeachment has been confided to the House of Representatives. It is the duty, therefore, of the majority, who accuse the president, to arraign him under the articles of impeachment before the Senate, if they believe him to be guilty of any impeachable offense. If he has neither assumed power, nor abused it corruptly, then the issue dwindles to a mere question—who is right as do a measure of policy? . . . If the charge preferred by this majority is understood, it involves no breach of the Constitution, or of any law on the part of the President; but they accuse him of obstructing *their* will. The accusation implies either a general infallibility on the part of the accusers, or a particular exemption from error on this occasion; or it denies the President the right and the responsibility of judging on a subject which Congress submitted to his judgment. They will find that there are two sides to this question. The Executive is a co-ordinate department of the Government. The President is under no obligation implicitly to approve every bill which the Legislature may pass. He is commanded either to approve, or, if he cannot approve, to return, with objections, *all bills* sent to him; and Congress are required to send to him *all bills* which they pass . . .

....

Minority Report of Mr. INGERSOLL (Democrat, Pennsylvania) and Mr. ROOSEVELT (Democrat, New York)

Free government depends on constitutional checks; otherwise, democracy is despotism. Each house of Congress has an absolute negative upon the other. The American Judiciary exercise the power to annul laws. The Union and the States, respectively, in some instances, nullify each other's legislation; the sovereign arbiter, being the people, never yet, in more than fifty years of prosperous experience, failing to interpose their political omnipotence, peacefully, intelligently, and for the general welfare. In addition to these fundamental principles, which are the conservative bases of our free institutions, the Constitution of the United States required the Executive Magistrate, if he disapproves an act of Congress, to return it, with his objections, to its authors, and call upon them to reconsider, before it can become a law. . . . What has been passionately stigmatized as the one-man power in this country, is, in principle, the same thing as the separation of Congress into two bodies, to correct the errors of each other; though much less powerful, because the power of the majority, by a single vote in either House, is absolute, while that of the Executive is merely suspensive and subordinate. Had all the members of the House of Representatives voted on the tariff bill, it would have either been carried or lost by one vote—and that, the casting vote of the Speaker. There is much of one-man power in all free government.