AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 5: The Jacksonian Era – Separation of Powers

House Debate on Tyler's Signing Statement (1842)[1]

President John Tyler created controversy when he signed bills passed by Congress as well as when he vetoed them. The Apportionment Act of 1842 was highly controversial on partisan, policy, and constitutional grounds. The Whigs in Congress were fairly united on the central constitutional question of whether Congress could and should prohibit the use of at-large elections to fill a state's delegation of members to the U.S. House of Representatives. The Democrats were fairly united in viewing the second section of the Appropriations Act, which required that states adopt district-based systems for House elections, as an unconstitutional infringement on the authority of the states.

The president had not been active in the apportionment debate, but when the bill was presented for his signature it emerged that he had doubts about the constitutionality of what his fellow Whigs had done. His doubts about this electoral measure seem not to be as grave as his doubts about substantive Whig policies on the Bank and protectionist tariffs, for he chose to sign rather than veto the Apportionment Act. Nonetheless, the president felt obliged to make clear that he did not fully endorse the constitutionality of the law. He expressed that opinion in the form of an official statement that was placed in the public records with the law itself. The Constitution did not require the president to give his reasons for approving a law (unlike a veto, which does require justification), and there were no substantial precedents for such a formal signing statement. Some members of Congress reacted with alarm, charging the president with imposing on an equal branch of government by gratuitously heaping constitutional doubts on an act of Congress and by attempting to insert them into the legislative record. The House referred the message to a select committee chaired by former president John Quincy Adams, who issued a stinging rebuke to Tyler.

Why does Adams object to Tyler's signing statement? How broadly does his argument apply to presidential signing statements? Are there ways for the president to get around the concerns that Adams raises?

Mr. CUSHING [Whig, Massachusetts] . . .

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. . . [Members of the House] wish to act upon the public mind by their speeches here, and they wish to justify their acts in the eyes of the world and of posterity. Well, has not the President as much right to act on the public mind as they? And may it not be just as important to the President of the United States, that the grounds for his action on a particular measure shall be communicated to posterity and the world, as it is important to members of Congress?

. . . . What is the precise nature of the participation of the President in the enactment of a law? Is it legislative, or is it an executive function?

. . . . The execution of it . . . cannot commence until after it becomes a law; whilst the signature is an act performed in the process of converting the bill into a law, and therefore cannot be the execution of the law. Mr. C. held, therefore, that, according to the strict and logical sense of the words, all the proceedings on a bill, from its inception to its consummation, were legislative acts.

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Mr. C. had chiefly desired that the Constitution might be understood. The Constitution did not contemplate a mathematical separation of the several departments of the Government; instead of which,

[1] *Congressional Globe*, 27th Cong., 2nd sess. (July 6, 1842), 892–893 (appendix); House Report No. 909, "Apportionment Bill," 27th Cong., 2nd sess. (July 16, 1842).

those departments were interlocked and intertwined with each other; they were dovetailed together, so as to make a complete instrument, constituting one harmonious machinery of government. Thus he understood the Constitution not only upon its letter, but upon the unanimous practice under it in all times; and still more upon the contemporaneous construction of the men of the Revolution by whom it was framed.

Mr. ADAMS [Whig, Massachusetts] . . . submitted the following REPORT . . . .

. . . . This is all his power – that is all his duty. No power is given him to alter, to amend, to comment, or to assign reasons for the performance of his duty. His signature is the exclusive evidence admitted by the Constitution of his approval; and all addition of extraneous matter can, in the opinion of the committee, be regarded in no other light than a defacement of the public records and archives. . . .

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If the President is justified in annexing his signature and declared approval of one act of Congress, presented to him for approval, an exposition of reasons, ostensibly for signing, but really against it, he may do the same with any or every other act of the Legislature so presented to him. He may announce his construction of any or every section of the bill, directly adverse to the constructive given to it by all the parties in the Legislature who enacted it. . . . The reasons of the President then become a running commentary upon the law, against its execution according to the intention of the Legislature, and forestalling the appropriate action of the Judicial tribunals in expounding it. A more fatal expedient for breaking down the constitutional barriers between Legislative, Executive, and Judicial powers could scarcely be devised. Under its operation, the law itself, instead of a rule of conduct prescribed for the obedience of the people, would become a mere record of the discordant opinions and conflicting wills of its makers.

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. . . [A] President of the United States needs no apology for sacrificing the mere pride of individual opinion, amounting only to a doubt, in deference to the honest and deliberate judgment of others; they deem such a sacrifice not only to be his right, but his duty. . . . But the committee cannot equally approve the principle of yielding the doubt, and yet retaining it; still less can they acquiesce in the integrity of coupling with the renunciation of the doubt a record of its continued existence.

. . . .

The private and personal interest of the President in the organization of the House of Representatives of the next Congress suggests motives on his part for desiring to influence that organization in the direction of his individual interest, which may account for this attempt to countenance and encourage a spirit, already too apparent on the part of more than one of the States, to set at defiance of the will of the whole Union, expressed beyond all possible cavil or honest controversy in the provision of the apportionment law. . . .