



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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Note on the Censure of President Andrew Jackson

The first attempt in American history to censure a sitting president took place in the middle of the removal debate. Whig leaders, who believed that Jackson acted unconstitutionally when removing the deposits, recognized that impeachment was impossible. Henry Clay asserted, “No Senator believed, in 1834, that, whether the President merited impeachment or not, he ever would be impeached . . . by a majority of his political friends in the House of Representatives.” Unable to impeach, Whigs concluded that a censure resolution was the best feasible alternative for expressing their constitutional objections to the Jackson presidency and weakening Jackson politically.

The Senate engaged in a three-month debate over whether that body could constitutionally censure the president and whether censure was warranted. Proponents of censure insisted that the Senate was constitutionally free to express in any way the sense of that body that the president had acted unconstitutionally. Clay declared,

it would be most strange if, when [the Senate’s] constitutional powers were assailed, it could not assert and vindicate them, because, by possibility, it might be required to act as a court of justice. The first resolution asserts only that the President has assumed the exercise of a power over the public treasury not granted by the constitution and laws. It is silent as to motive; and, without . . . the deliberate purpose of impeachment the President would not be liable to impeachment. But if a concurrence of all the elements be necessary to make out a charge of willful violation of the constitution, does anyone believe that the President will now be impeached? And shall we sit silently by, and see ourselves stripped of one of the most essential of our legislative powers, and the exercise of it assumed by the President, to whom it is not delegated, without effort to maintain it, because, against all human probability, he may be hereafter impeached? ¹

The Senate Whigs rallied behind Clay. In March 1834, the Senate passed the Censure Resolution.

President Jackson responded quickly. In a message largely drafted by Roger Taney, Jackson asserted that the Censure Resolution was unconstitutional and he vindicated the right of the president to control the executive branch. Jackson’s “Protest of the Censure Resolution” declared that Congress was empowered only to impeach the President and that an impeachment had to be initiated by the House of Representatives, the most popular branch of the national legislation. Jackson stated,

the resolution of the Senate is wholly unauthorized by the Constitution, and in derogation of its entire spirit. It assumes that a single branch of the legislative department may for the purposes of a public censure, and without any view to legislation or impeachment, take up, consider, and decide upon the official acts of the Executive. But in no part of the Constitution is the President subjected to any such responsibility, and in no part of that instrument is any such power conferred on either branch of the Legislature.

¹ *Register of Debates*, 23rd Cong., 1st Sess., 75.



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... The power of arraigning the high officers of government before a tribunal whose sentence may expel them from their seats and band them as infamous is eminently a popular remedy—a remedy designed to be employed for the protection of private right and public liberty against the abuses of injustice and the encroachments of arbitrary power. But the framers of the Constitution were also undoubtedly aware that this formidable instrument had been and might be abused. . . . It was due to both these considerations that the impeaching power should be lodged in the hands of those who from the mode of their election and the tenure of their offices would most accurately express the popular will and at the same time be most directly and speedily amendable to the people. . . .

Jackson again had the last laugh. Democrats achieved a landslide victory in the 1834 midterm elections, gaining control of the Senate and increasing control over the House of Representatives. In January 1837, the Senate voted to expunge the Censure Resolution from the Journal of the Senate. Had the Whigs won control Congress in the midterm elections instead of the Democrats, could they have reasonably pursued impeachment charges against Jackson? Does this episode suggest that the impeachment power no longer worked properly in a time of organized political parties?