



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
 Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 5: The Jacksonian Era – Federalism

OXFORD
 UNIVERSITY PRESS

Senate Debate on the Right of State Legislatures to Instruct U.S. Senators (1858)¹

The right of constituents to “instruct” legislators was a source of controversy in the early nineteenth century. The First Amendment to the U.S. Constitution recognizes the established right of constituents to “petition,” or ask, their legislators to resolve their grievances. James Madison was able to beat back a proposal to add a right of instruction to the proposed First Amendment. A right of instruction suggested that legislators were obliged to obey a directive issued by their constituents. For U.S. senators, this was most likely to take the form of a resolution from the state legislature. For representatives, this might take the form of resolutions adopted at public meetings.

The principle of instruction did not die with the defeat of the constitutional proposal in the First Congress. Many politicians, especially in the Jeffersonian and Jacksonian parties, continued to believe in the right of instruction. Many state legislatures, especially in the South, adopted instructing resolutions and expected their U.S. senators to abide by them. After the Civil War, the power of the idea of instruction faded, but it was most hotly contested in the early republic in debates over the Bank of the United States and slavery.

In the mid-1850s, the two chambers of the Tennessee legislature passed a series of resolutions expressing their opinion on the admission of Kansas to the Union and eventually instructed their senators to vote to admit Kansas as a slave state. Tennessee senator John Bell was a former Whig and current member of the American, or Know-Nothing, Party, and he had opposed organizing Kansas into a slave state. The legislature’s resolution was targeted at him by name. Tennessee senator Andrew Johnson was a Democrat and supporter of organizing Kansas as a slave state. On the floor of the Senate in 1858, Bell explained the limits of the doctrine of instruction, and Johnson called him to task for ignoring the state legislature and accused him of preparing for a presidential bid by trying to win favor with the North. John Bell would go on to run for president in 1860 on the Constitutional Union ticket, helping to split the southern vote. Andrew Johnson would eventually join Abraham Lincoln’s National Union ticket in 1864 and succeed him as president upon his assassination.

How important are states’ rights to Johnson’s argument? Are there circumstances in which Bell would feel obligated to obey the legislature?

Mr. BELL (American, Tennessee) . . .

Practically, we know that this doctrine has long ceased to be of any great use in protecting the public interests of the country. I believe . . . that this doctrine is incorporated as an article of faith in the creed or political platform of none of the political parties of this day. The late Whig part discarded it altogether. The Democratic party, I believe, still profess the doctrine, particularly in some of the States; but from my observation here, I beg leave to say that I find Democratic Senators obeying or disobeying instructions at their discretion. The truth is, that its general use may be aptly termed an abuse. It is resorted to for the most part as an engine of party and to promote party ends, instead of protecting the public interests of the country. This doctrine, so far from having any support in the Constitution, in my judgment is directly at war both with the spirit and literal provisions of the Constitution as I interpret them. A principal aim of the framers of the Constitution, in giving to the Senate its peculiar structure and organization, was to secure greater stability to the policy of the Government, and greater consistency to

¹ Excerpt taken from *Cong. Globe*, 35th Cong., 1st sess. (Feb. 23, 1858), 804–810.



the national legislation, than could be expected were both branches of Congress so constituted as to admit an entire change of its members every two years.

The advocates of this doctrine have contended that the right of instruction springs naturally from the relation which exists between the constituent and the representative – a plausible argument; but Senators do not represent the Legislature of their State. They represent, it is true, the sovereignty of their States . . . ; but, on fundamental principles, that reserved sovereignty does not exist in the Legislature; it is in the people of the State. . . .

. . . .
 . . . The Constitution expressly provides that all the legislative powers granted by that instrument are vested in a Congress of the United States. . . . If the Legislatures of the several States have the rightful power to control the votes and the course of their Senators upon all questions which may arise in the Senate, that provision of the Constitution ought to be amended, so as to read that all the legislative powers herein granted are vested in the Congress of the United States, to be composed of the Senate and House of Representatives, and in the Legislatures of the several States. . . . The true theory of the Constitution upon this subject, I think, is that the Legislatures . . . choose the representatives of the States in the Senate; and that when they have performed that duty, they have no longer any control over them.

From these views it will be seen that I do not acknowledge the instructions of my Legislature as carrying with them any obligation of obedience Their views and options, in all cases, are entitled to respect. . . . I would say that they are entitled to great weight and influence with the Senator in deciding upon his course in relation to it – nay, sir, in whatever case the expression of the opinion of the Legislature should come to me, formed upon such an understanding of its bearings and consequences . . . and involving no constitutional difficulty, I would shape my course in deference to, and in conformity with, that opinion. . . .

Mr. JOHNSON (Democrat, Tennessee) . . .

I know that . . . there is one party who deny obedience to popular sentiment, and who are always ready and willing to, when they can do so plausibly and successfully, to evade the popular sentiment, especially when it comes in conflict with their peculiar notions. I know that there is a party in this country who have a great dread of popular sentiment; and hence many assume the position that the Senate of the United States is placed beyond the reach of the popular will, and should be so. I hold no such doctrine. I hold that the popular sentiment, when fairly and fully expressed, should be obeyed by public agents in this Government. We assume here that all power is in the people, that they are sovereign; and when the sovereign expresses his will the agent is bound to obey. I know, as well as my honorable colleague, that there is nothing in the Constitution which requires or compels a Senator or Representative to obey instructions, further than what is acknowledged by the respective parties of the country. The Democratic party, as I understand, lay down the doctrine that their public servants are always bound to obey the popular will when it is fairly and fully understood and expressed. . . . The Democratic party hold that the Governments are instituted for the good of the people; that a Government derives all its powers from the consent of the governed; that government is made and organized and established for the people's convenience, and not the people for the Government; that the Government should always feel itself under the control of the popular sentiment, instead of the people feeling that they are under the control of the sentiment of the Government. . . .

. . . .
 I understood my colleague then to state, that the instructions in reference to his course in 1854 have no influence upon him whatever.

Mr. BELL. I do not say so, and I do not authorize my colleague to say so.

Mr. JOHNSON. I understood my colleague to say he would disregard them.

Mr. BELL. No, sir; I do not mean to say that I shall disregard them. . . . I have said that there is a certain respect due to the expression of opinions of a Legislature in all cases and under all circumstances. . . . When the Legislature of Tennessee express their views, or wishes, or instructions, or



recommendations, to me as a representative of the State which they represent, I feel bound to treat them with a certain degree of respect in all cases. . . .

But the case is different as to opinions . . . hastily formed. . . . Without treating them with the least disrespect, I would not be governed by their opinions, formed under such circumstances

Mr. JOHNSON. I am very much obliged to my colleague . . . I must conclude that there is nothing wanting on his part, but it is obtuseness on the part of myself that I cannot comprehend clearly and distinctly all his positions.

Mr. BELL. I am sorry for it.

Mr. JOHNSON. It is an unfortunate condition to be in. . . . I understand him, first, to say he disregards the instructions given in the first resolution [of the state legislature]. . . .

Mr. BELL. I beg to correct my colleague again. I pray that he will do me justice. I said that I begged to differ in opinion with the Legislature on that subject, in the most courteous language that I was capable of using - not to disregard them.

Mr. JOHNSON. . . . There have been four years of deliberation and consideration, and at the end of that time they come to the honorable Senator in his own language. He considers it as gratuitous, and as having originated with plotters. There may be plotters there; I know not; I know it is the voice of the people of Tennessee, and they have spoken on this subject in language not to be misunderstood; yet the honorable Senator says to that portion of it he acknowledges no obligation of obedience. . . .

We see, in this instance, and there may be others, honorable Senators and members of Legislatures setting themselves up, and bidding defiance to popular sentiment. Would to God the voice of the people could be heard and felt more than it is throughout the land. If it could, we should be relieved from a great deal of improper, improvident, and extravagant legislation; and a large portion of it fixed upon them in violation of their will. I know there are many who are brought up, raised in a sphere far removed from the mass of the people - men who have no confidence in the great mass. . . . I think I know the leading principles that control the great mass of the people; and they are far higher, far more honorable, than those that actuate the leaders and rulers. . . .