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PRESIDENTIAL REMOVAL POWER AND JOHNSON'S IMPEACHMENT

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The passage by Congress in 1867 of the Tenure of Office Act that curbed the President's power of removal, and its nearly successful attempt to remove President Andrew Johnson for violation of that law, stemmed from and exemplified the major political tensions of that time. Beyond this political significance, however, these actions involved a major area of executive and legislative power that the Constitution had failed to define explicitly—that is, who has the power to remove top executive officials? Because one of the key powers necessary to control government action is the ability to remove top officials, it is not surprising that in the Johnson impeachment and at other times, strong disagreement on who has this power has been a source of great friction between the President and Congress. Although later Supreme Court decisions have provided much more clarity, and mostly supported the President, executive/legislative friction was made more intense by the Constitution's failure to deal with the issue, thus leaving more room than usual for conflicting interpretations of the Constitution's meaning and intent.

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As the United States has matured as a nation, and as the Constitution has been the basis for measuring all governmental actions, debates over how to interpret and apply the Constitution to a modern society have constantly arisen. The framers must have anticipated such debates, as they intended for the document to last far beyond their lifetimes. It would have been reasonable for the framers to assume that amendments would be added when events in society made them necessary and that decisions would be made based upon implications drawn from either the wording of the document or the possible intentions behind it. The framers might have been surprised, however, that the First Congress, with nineteen members who were delegates to the Constitutional Convention, would stumble across an issue that was nowhere defined in the Constitution, and that they would be left searching for, and disagreeing upon, implied meanings in the document. Such turned out to be the case with the issue of Presidential removal power. Although the Constitution provides a method for the appointment of officers, it is lacking a procedure for the removal of officers other than impeachment. It is not clear why the Constitution does not spell out the process of removal. That is why the First Congress, with so many delegates from the Constitutional Convention, still had to debate the issue so intensely. Although the First Congress ultimately reached a decision concerning the removal power, it was not a concrete and definitive decision, and as a result did not end the debates.

Before beginning a more detailed historical analysis, it is worth noting the sections of the Constitution that are often cited as relating to the issue of Presidential removal. They are relatively few. The Constitution established the executive branch in Article II. Section 1, which vests all executive power in the President. Unlike Article I, there is no long list in Article II of the President's powers and duties, although it does contain a few. Article II, Section 3 states generally that the President "shall take care that the laws be faithfully executed." In regard to appointments, Section 2 states that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint...officers of the United States." There is no section dealing with removal of such

officers other than the impeachment process, which requires "treason, bribery, or other high crimes and misdemeanors."

The debates over Presidential removal power first began when James Madison proposed to the First Congress that there be three executive departments: Foreign Affairs, Treasury, and War. He proposed that there be a Secretary in charge of each department, who should be appointed with the advice and consent of the Senate (as stated in the Constitution), and who should be "removable by the President." Madison defended this language by arguing that it would hold the President responsible for the actions of his department heads.[1] Nevertheless, Madison received strong opposition in the First Congress. William Smith of South Carolina argued that the phrase "removable by the President" had to be deleted. For if the Constitution did indeed give such powers to the President, then there was no need to repeat it. If the Constitution did not give such powers, however, then Congress was not entitled to confer them. In this case, Smith argued, the issue should be left to the judiciary, a concept that seemed very similar to what would become the theory of judicial review.[2]

Others argued theories that were more straightforward, relying more on the actual text than on interpretation. Theodorick Bland of Virginia, for example, moved to add the words "by and with the advice and consent of the Senate" to the original phrase. This way, the removal process could be consistent with the appointment process of the Constitution.[3] Bland's motion was rejected.

Four major theories quickly emerged concerning removal power. The first theory, providing no room for interpretation at all, was simply that removal can be made only by the constitutional process of impeachment. This theory was not very realistic, however, as an impeachment trial described in the Constitution is an incredibly long, difficult, and drawn-out process.[4] The second theory, that of Bland's, was that removal power developed from appointment power, and consequently the Senate should maintain its shared role in the removal process. The third theory was that because the Constitution specifically delegated to Congress

the authority to create new laws and offices, then it follows that the Congress can attach conditions concerning removal. The final theory was that removal power belongs solely to the President as a component of executive power.[5]

Although nobody was able to point clearly to any section of the Constitution to support a theory definitively, supporters of Bland's theory were able to refer to the next best thing: *The Federalist Papers.* For in *Federalist 77,* Alexander Hamilton clearly discusses the issue of removal power:

> It has been mentioned as one of the advantages to be expected from the cooperation of the Senate, in the business of appointments, that it would contribute to the stability of the administration. The consent of that body would be necessary to displace as well as to appoint. A change of the Chief Magistrate, therefore, would not occasion so violent or so general a revolution in the officers of the government as might be expected if he were the sole disposer of officers...[6]

Those strongly opposed to providing the President with the sole power to remove, such as William Smith, were able to refer to this passage as justification for their theory. *The Federalist Papers,* after all, were some of the primary documents behind the approval of the Constitution. However, in a letter to Edward Rutledge, Smith wrote:

> The next day Benson sent me a note across the House to this effect: that Publius had informed him since the preceding day's debate, that upon mature reflection he had changed his opinions and was now convinced that the President alone should have power of removal at pleasure; he is a Candidate for the office of Secretary of Finance.[7]

This candidate, of course, was Alexander Hamilton. Either he felt he had been drastically wrong in *Federalist 77* and simply upon "mature reflection" understood the issue more clearly, or he was inspired by political aspirations. Whatever the causes may have been, Hamilton changed his views on removal power and in effect invalidated that section of *Federalist 77.*

The debates in the First Congress continued, as Madison admitted that the Constitution was not as clear on the issue as he had originally believed. He said it did not "perfectly correspond with the ideas I entertained from it at first glance." Yet Madison still

argued that the Constitution vested executive power in the President with only a few exceptions; the appointment process being one of them. This exception should not be extended to the removal process, he argued.[8] The Congress creates an office, defines its powers, limits its duration, and fixes a compensation, but "this done, the legislative power ceases."[9]

Congress was leaning towards accepting the theory that the President should have sole removal power. However, this raised another intriguing question: If the President does obtain this authority from the Constitution, then does the Congress need, or even have the right, to restate it? If not, then the phrase "to be removable by the President" is not only superfluous but also an aggrandizement of Congress' power. If the phrase was preserved, as Robert Sherman argued, then it would imply that the President lacked removal power and had to be given it by law.[10] As a result the First Congress altered the wording so that the power of removal would indeed be only the President's power, but through implication.[11] The Congress passed a motion presented by Egbert Benson which proposed that the bill should read that the chief clerk (second in command in the Foreign Affairs Department) should take charge of all records when the Secretary "shall be removed from office by the President."[12] The First Congress had seemingly decided that the President does indeed have sole authority to remove executive officers. However, there are two factors that limited the degree to which the decision of the First Congress could resolve future disputes on removal issues. First, although they ultimately decided that the removal power belongs to the President, they never actually wrote it because of their conscious effort to do it by implication. Secondly, the President was only given the power to remove heads of departments. The decision of the First Congress did not provide the President with the authority to remove any officer in the Executive Branch.[13] These two factors, combined with the previously stated problems concerning removal power, caused the issue to remain in debate.

The next major debate over removal occurred in 1833 during the administration of Andrew Jackson, when Jackson's

Secretary of Treasury William Duane refused to follow Jackson's policies concerning deposits and state banks. He disagreed with Jackson in that he believed that the removal of deposits from the central bank was not urgent and that state banks were unsafe.[14] Duane argued that as the appointed Secretary of the Department of Treasury, the decisions were solely his. This revived the removal debate, and resulted in President Jackson removing Duane and replacing him with Roger Taney, who immediately removed the deposits. Jackson explained his view of the position of Secretary of Treasury:

> ...Viewing it as a question of transcendent importance, both in the principles and consequences it involves, the President could not, in justice to the responsibility which he owes to the country, refrain from pressing upon the secretary of the Treasury his view of the considerations which impel to immediate action. Upon him has been devolved by the Constitution and the suffrages of the American people the duty of superintending the operation of the Executive Departments of the Government and seeing that the laws are faithfully executed...[15]

Jackson provides a very compelling argument. If the President is to be held accountable for the Executive department and make sure that the laws be "faithfully executed" (Article II, Section 3 of the Constitution), then it seems only fair that he be permitted to remove officers who do not follow his plans. As leader of the Executive branch, the President must be able to have control over his cabinet members. Jackson stated this point effectively.

The impeachment of Andrew Johnson emphasized that there was still no accepted answer to the removal debate. Because the question was still unsettled, the Radical Republicans were able to attempt to latch on to this constitutionally ambiguous area and pass the Tenure of Office Act in March of 1867. The law stated that any civil officer, appointed with the advice and consent of the Senate, was to remain in office until a replacement had been nominated and approved by the Senate. More specifically, the act pertained to members of the cabinet, allowing them to hold their positions "during the term of the President by whom they may have been appointed, and for one month thereafter, subject to

removal by and with the consent of the Senate."[16] This provision of the law was intended to prevent Johnson from removing Secretary of War Edwin Stanton from his cabinet, who was the only remaining cabinet member allied with the Radical Republicans.[17] The Republicans, who controlled Congress, were infuriated with Johnson's seemingly pro-Southern views during Reconstruction. They had already limited his power with laws such as the Army Appropriation Act and the Third Reconstruction Act. The Radical Republicans desperately wanted to impeach Johnson, but were unable to do so without any action that resembled a "high crime or misdemeanor." When Johnson removed Secretary Stanton, and then disregarded the Senate's repeal of Stanton's dismissal, the Republicans finally had the action that they felt constituted an impeachable offense. As a result the House passed eleven articles of impeachment against Johnson, nine of which were for violation of the Tenure of Office Act. The other two articles charged Johnson with a violation of the Army Appropriations Act of 1867 and of general contempt towards Congress.

The House managers, who brought the Articles of Impeachment to the Senate for trial, raised the question of whether impeachment can occur for purely political offenses. They argued that it can, citing the Pickering precedent, where Judge John Pickering was impeached on non-indictable offenses in 1804.[18] If they were correct in their assessment that the Senate was indeed sitting as a political body and not a court, then it could conceivably hear evidence not admissible in a regular court and could convict the President based on political offenses and whether or not they deemed Johnson fit to hold the office of the presidency.[19] If they were incorrect, however, then a conviction could only occur based upon specific offenses against the law, and the Senate would be restricted as to the types of evidence permitted into the trial.

The managers' choice to use this argument reflects their uncertainty concerning the Tenure of Office Act. For the radicals in Congress clearly waited until Johnson had committed what they deemed an indictable offense to proceed with the impeachment. They seemingly, and justifiably, believed that political actions were

not enough to impeach the President, no matter how severe. Yet now, the same radicals were arguing that impeachment was a political tool to be used against the President. Clearly, they doubted the strength of their legal case based on the violation of the Tenure of Office Act and were questioning the constitutionality of imposing such a limitation on Presidential removal power, as had been done by many in years past. By arguing for the impeachment trial to be a political effort against the President, the House managers had weakened the heart of their case, the nine articles concerning the Tenure of Office Act, before the trial had even begun.

Despite the managers' attempts, the Senate ruled in favor of Johnson on the issue, by a vote of 31-19. They agreed, as Johnson's defense argued, that a trial is a judicial proceeding and therefore the Senate takes the place of the court. The defense also cited Article I, Section 3 of the Constitution, which states that the Senate is given the power to "try" impeachments, thus suggesting that this should proceed in a fashion similar to a judicial proceeding.[20]

The trial continued with the managers already having lost one of their two major arguments. It appeared that the tenth article of impeachment was now irrelevant, for it had no legal backing. It claimed that Johnson was "unmindful of the high duties of his office, and the dignity and proprieties thereof, and of the harmonies and courtesies which ought to exist and be maintained between the executive and legislative branches of the government."[21] This was the heart of the managers' case, but with the ruling that the impeachment trial is judicial and not political, the managers had to focus all of their attention on the issue of Presidential removal power.

To the charges of the violations of the Tenure of Office Act, Johnson's defense team made three key arguments. First, they argued that Stanton was not even covered by the Act because he was appointed during the term of Lincoln. The managers responded to this by declaring that Johnson was actually serving Lincoln's term, and not his own. The second argument of the

defense was that even if Stanton were covered by the act, it was a doubtful point and by no means sufficient to serve as grounds for removal. Finally, and most importantly in a historical perspective, the defense argued that the Tenure of Office Act was unconstitutional in that it violated the President's power to "take care that the laws be faithfully executed."[22] This was the essence of Johnson's defense and the primary reason that he believed his removal of Stanton was justifiable. For just as the First Congress and Jackson had decided, Johnson believed that the President possesses the constitutional right to remove his cabinet members. Therefore, Johnson believed that by intentionally violating the Tenure of Office Act, he would thereby be questioning its constitutionality.[23]

Although Johnson's third argument, that against the constitutionality of the Tenure of Office Act, was the most critical and had the most lasting effect, it did not sway any votes.[24] The argument that did sway votes, however, was the one claiming that the President should not be removed from office on account of a doubtful law that, as Justice Rehnquist writes in *Grand Inquests*, took a "Philadelphia lawyer to explain." It is apparent that the constitutional argument became vital in later cases that ultimately decided the Presidential removal issue. But it is striking that Johnson's calculated decision to violate the Tenure of Office Act and thereby test its constitutionality nearly backfired. For although Johnson was ultimately acquitted, it was not because the Tenure of Office Act was deemed unconstitutional. In fact, the act was not repealed for another twenty years. Johnson was acquitted because seven Republicans voted that either Stanton was not covered by the Tenure of Office Act or that Johnson's removing of Stanton to challenge the constitutionality of the Act does not constitute an impeachable offense. In his explanation of his decision to acquit, Senator James W. Grimes wrote:

> The Constitution has provided a common arbiter in such cases of controversy [removal power]—the Supreme Court of the United States. Before that tribunal can take jurisdiction a removal must be made. The President attempted to give the Court jurisdiction in that way. For doing so he is impeached...[25]

Grimes understood that Johnson was attempting to test the constitutionality of the Tenure of Office Act. Yet he rendered no view on that issue. It is interesting that not one of the seven Republicans who voted to acquit did so because they believed the Tenure of Office Act to be unconstitutional. It has been suggested that these seven conservative Republicans (Fessenden, Fowler, Grimes, Henderson, Ross, Trumbull, and Van Winkle), who have often been praised for overcoming politics to preserve the Constitution, voted to acquit the President because they were uneasy with the policies of radical Senator Ben Wade of Ohio, the President ProTempore of the Senate.[26] If Johnson had been removed, Wade would have become the President. However, in *Reconstruction: America's Unfinished Revolution, 1863-1877,* Eric Foner concludes that Senators Trumbull, Fessenden, and Grimes were concerned not only about the policies of a Wade presidency but "feared...the damage to the separation of powers that would result from conviction."[27] This larger concern may help explain Foner's conclusion that even though Johnson avoided removal by only one vote, there were a number of other Senators ready to support the President if necessary.[28]

Johnson's acquittal, especially since it was by the slightest of margins, did not prove the unconstitutionality of the Tenure of Office Act. However, the Johnson impeachment trial played a crucial role in the continuing debates over Presidential removal power. It demonstrated that despite the findings of the First Congress and Jackson, there was still no conclusively accepted theory. That is why the radicals were able to use the issue and create the Tenure of Office Act. Removal power was an area of constitutional uncertainty that the radicals latched on to in order to impeach the President. The second major role that the impeachment trial played was that it established the "faithfully execute the laws" defense of removal power. This would be critical when removal power was ultimately determined to be solely a Presidential power in *Myers v. United States* in 1926.

In 1872, Congress enacted a statute that regulated the Post Office Department, requiring the same procedure for removal

(Senate consent) as in the Tenure of Office Act. Although the Tenure of Office Act was eventually repealed in 1887, this law remained a precedent of sorts, and partly helped bring about a conclusive decision for the removal power debate.

In 1919, President Woodrow Wilson ordered the removal of the Postmaster of Portland, Frank Myers, due to "irregularities" found in the management of the Portland Post Office. Myers sued in a Court of Claims for the salary he would have received had he been permitted to finish his term. Myers lost and then appealed to the Supreme Court, arguing that the 1872 Act required the consent of the Senate for all removals. The government, arguing nearly the same case as Johnson's defense had earlier, claimed that the 1872 Act was unconstitutional because it infringed upon the powers of the President.[29] This is where the major difference between the Johnson impeachment and the *Myers* case is reached. Whereas Johnson had as his jury a political body of some of his fiercest opponents, the Supreme Court was the "jury" in the *Myers* case. Moreover, the Chief Justice was William Howard Taft, the only man to serve as both Chief Justice and President. It would be reasonable to assume, therefore, that in a dispute between Congress and the executive, Taft would be more sympathetic to the executive. Writing for a 6-3 majority, Taft ruled in favor of the United States in a striking decision that seemed likely to end the removal debates.

The decision on the *Myers* case would not have been so striking if it had not been for Chief Justice Taft's explanation. In it, he declared practically unrestrained Presidential removal power, and cited the First Congress, Jackson, and Johnson as his evidence.[30] He wrote that in the First Congress:

> [T]here was not the slightest doubt that after an examination of the record, that the vote was, and was intended to be, a legislative declaration that the power to remove officers appointed by the President and the Senate vested in the President alone, and until the Johnson impeachment trial in 1868 its meaning was not doubted, even by those who questioned its soundness.[31]

It is true that the First Congress eventually reached a decision that removal power is an executive power, but from the discussion

earlier in this paper, it is apparent that there was not "not the slightest doubt," but rather great division and debate. Additionally, the debates of the First Congress were in regard to the Secretary of Foreign Affairs. It can be argued that such thinking should not be extended to a postmaster.[32]

In addition to citing the decision of the First Congress, Taft decided, as Johnson had argued, that the 1872 Act violated the President's ability to "take care that the laws be faithfully executed." The dissenters in the case, Justice Holmes, Justice McReynolds, and Justice Brandeis, argued that this clause of the Constitution meant very little, except that the President has to carry out laws, including those that require the consent of the Senate to remove subordinates.[33]

In his decision, Taft also judged the Tenure of Office Act, and assessed its unconstitutionality:

> When on the merits we find our conclusion strongly favoring the view which prevailed in the First Congress, we have no hesitation in holding that conclusion to be correct, and it therefore follows that the Tenure of Office Act of 1867, insofar as it attempted to prevent the President from removing executive officers who had been appointed by him and with advice and consent of the Senate, was invalid, and that subsequent legislation equally was so.[34]

Taft has received much criticism from some critics for his decision in the *Myers* case,[35] as it is often viewed that he went too far in expanding executive power and in interpreting the decision of the First Congress. A leading constitutional scholar, Edward Corwin, wrote shortly after the *Myers* decision that for 135 years the Supreme Court had been "dexterous to avoid" the issue decided by the court in *Myers,* and predicted that the sweep of the decision posed "a positive instigation to strife between the President and Congress."[36] It is worth noting the views of one modern critic, Raoul Berger. In his decision, Berger states, Taft follows the views expressed by Hamilton in his 1793 "Pacificus" papers, in which Hamilton discusses the difference between the enumerated grant of power in Article I of the Constitution and the more general grant in Article II. Regarded on its own, this difference could be interpreted to imply the framers' intent to create an executive

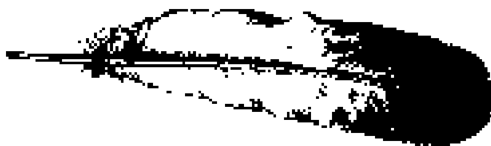
branch of unlimited power. Yet when analyzed in the text of the constitutional debates, it is clear, Berger concludes, that such was not the case. The Framers wanted to form a legislature that would be predominant over the executive, as is exemplified by the Congressional overturn of a Presidential veto. It is true, he states, that the framers intended to increase the strength of the executive yet they wanted to do so and still have the legislature limit its powers.[37]

According to this view, Taft misconstrued the Framers' view of the word "enumeration." In his decision in the *Myers* case, Taft wrote that "the executive power was given in general terms, strengthened by specific terms where emphasis was regarded as appropriate."[38] Yet a major issue at the Constitutional Convention was that enumeration of governmental powers defined the legality of actions. At the Virginia Ratification Convention, Governor Randolph said that the powers of the government "are enumerated. Is it not, then, fairly deducible that it has no power but what is expressly given it?—for if its powers were to be general, enumeration would be needless."[39] And in *Federalist 45*, Madison writes that "the powers delegated...to the federal government are few and defined."[40] Of course, these views are strongly opposed by those who argue that there are implied powers given to the executive, and that the Constitution must be flexible to adapt to modern situations. But this is one viewpoint that strongly opposes the increase of executive power.

The Court modified its decision in *Myers* in the case of *Humphrey's Executor v. United States* (1935). That case involved the removal by President Roosevelt of a member of the Federal Trade Commission. The Court ruled that the *Myers* decision did not apply here because this was a regulatory body not exclusively within the executive branch. It did so, according to one writer, because the *Myers* decision was too drastic and because Congress would not allow matters of removal to be exclusively in the President's power.[41] More recently, the Supreme Court in *Morrison v. Olson* (1988) limited *Myers* further when it upheld the constitutionality of the Ethics in Government Act under which the inde-

pendent counsel was removable only by the Attorney General and not by the President even though the independent counsel was found to be performing "executive" functions.[42]

The debate over Presidential removal power began almost as soon as the Constitution was ratified. Its striking omission opened the doors for far-reaching theories concerning the intent of the framers and the possible implications of certain sections of the Constitution. After much debate, the First Congress reached the decision that removal power belonged solely to the President, yet they did not state it because it was believed that to do so would be an improper assertion of Congress' power over the executive. As a result, the issue was left rather uncertain, and provided the opportunity for the radical Republicans of 1867 to create the Tenure of Office Act. They were able to use this newly enacted limitation on Presidential removal power in order to impeach President Johnson, despite the fact that it had seemingly been accepted for years that removal power belonged to the President. It is somewhat ironic, therefore, that when a concrete decision was ultimately reached in the *Myers* case, awarding all removal power to the President, Chief Justice Taft received criticism for being too extreme. Perhaps this was a useful reminder that we do not want to go too far to either extreme concerning an issue on which the Constitution is silent. That is why a decision on removal power was not reached for so long and why the issue is still raised today.



Endnotes

[1] Louis Fisher, Constitutional Conflicts Between Congress and the President (Lawrence, Kansas: University Press of Kansas, 1997) p. 50

[2] Ibid., p. 50

[3] Ibid., p. 50

[4] Actual experience in the nation's early years proved this to be true. In 1819, Thomas Jefferson concluded: "Experience has already shown that the impeachment the Constitution has provided is not even a scarecrow. It is a cumbersome, archaic process..." Edward S. Corwin, Edward S. Corwin's The Constitution and What it Means Today (revised by Harold W. Chase and Craig R. Ducat, 13th edition) (Princeton: Princeton University Press, 1973) p. 159

[5] Michael P. Riccards, A Republic, If You Can Keep It: The Foundation of the American Presidency 1700-1800 (Westport, Connecticut: Greenwood Press, 1987) p. 84

[6] Alexander Hamilton, John Jay and James Madison, The Federalist Papers (New York: The New American Library of World Literature, Inc., 1981) p. 459

[7] Jack N. Rakove, Original Meanings: Politics and Ideas in the Making of the Constitution (New York: Alfred A. Knopf, 1996) p. 350

[8] Fisher, pp. 50-51

[9] Riccards, p. 85

[10] Fisher, p. 52

[11] William H. Rehnquist, Grand Inquests: The Historic Impeachments of Justice Samuel Chase and President Andrew Johnson (New York: William Morrow and Company, Inc., 1992) p. 230

[12] Fisher, p. 52

[13] Ibid., p. 53

[14] Leonard D. White, The Jacksonians: A Study in Administrative History, 1829-1861 (New York: The Macmillan Company, 1967) p. 36

[15] Ibid., p. 36

[16] Kenneth M. Stampp, The Era of Reconstruction: 1865-1877 (New York: Random House and Alfred A. Knopf, 1965) p. 147

[17] Ibid., p. 147

[18] Rehnquist, p. 128

[19] Stampp, p. 152

[20] Rehnquist, p. 268
[21] Stampp, p. 151
[22] Rehnquist, p. 228
[23] Stampp, p. 152
[24] Rehnquist, p. 230
[25] Beatrice K. Hofstadter and Richard Hofstadter, eds., Great Issues in American History: From Reconstruction to the Present Day, 1864-1981 (New York: Random House, 1982) p. 42
[26] Rehnquist, pp. 246-247
[27] Eric Foner, Reconstruction: America's Unfinished Revolution: 1863-1877 (New York: Harper and Row Publisher, 1988) p. 336
[28] Ibid., p. 336
[29] Rehnquist, p. 263
[30] Fisher, p. 61
[31] Rehnquist, p. 266
[32] Fisher, p. 61
[33] Rehnquist, p. 265
[34] Ibid., pp. 267-268
[35] Thomas E. Cronin, ed., Inventing the American Presidency (Lawrence, Kansas: University Press of Kansas, 1997) p. 199
[36] Edward S. Corwin, The President's Removal Power Under the Constitution (New York: National Municipal League, 1927) p. 68. Corwin's comprehensive analysis and criticism of the decision also appeared in "Tenure of Office and the Removal Power Under the Constitution," Columbia Law Review Vol. 27, No. 4 (April, 1927) pp. 353-399
[37] Raoul Berger, Executive Privilege: A Constitutional Myth (Cambridge, Massachusetts: Harvard University Press, 1974) pp. 56-57
[38] Ibid., p. 57
[39] Ibid., p. 57
[40] Hamilton, Jay and Madison, p. 292
[41] Cronin, p. 199
[42] Forrest McDonald, The American Presidency—An Intellectual History (Lawrence, Kansas: University Press of Kansas, 1994) p. 330. The Supreme Court's discussion of the removal section appears at 487 U.S. 654, pp. 685-693

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