The Constitutionally Illogical Whig Presidency

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Abstract

This article examines the Whig Party's conception of the presidency and argues that it failed to take hold because the idea of an executive which is subordinate or deferential to the legislative branch is fundamentally at odds with the Constitution. To show this, I assess the four presidents from the Whig Party: William Henry Harrison, John Tyler, Zachary Taylor, and Millard Fillmore. Each of these presidents entered office supporting the Whigs' ideological vision of legislative supremacy and weak executive power, yet quickly abandoned that vision once in office. I contend that this demonstrates the constitutional logic of the presidency and the way it shapes the officeholder's perspective, orienting presidents toward a robust understanding of executive power. In short, presidents do not act like Whigs because the Constitution directs them not to.

Early in the Constitutional Convention of 1787, delegate Roger Sherman of Connecticut argued that "the Executive magistracy [w]as nothing more than an institution for carrying the will of the Legislature into effect."[1] Such a view reflected Americans' long-standing antipathy to executive power and has remained a staple of American political thought. It is, however, at odds with American constitutional practice, as the national executive, in the office of the presidency, has become in many ways the focal point of American governance. Nonetheless, Sherman's intellectual descendants have repeatedly attempted to confine executive power and reduce it to a subordinate position relative to Congress.

One of the major inflection points where the presidency might have turned in a more Shermanite direction was with the ascendancy of the legislative supremacist Whig Party and the administrations of four Whig presidents in the 1840s and 1850s: William Henry Harrison (1841), John Tyler (1841–1845), Zachary Taylor (1849–1850), and Millard Fillmore (1850–1853). Yet even those presidents who ran on the promise that they would defer to the legislature rather than flex their executive muscles ended up repudiating those promises once in office, embracing an understanding of strong presidential authority.

While the Whig presidents were not the first or the last presidents to say one thing on the campaign trail and do another once in office, their shift from decrying executive power to embracing it is a radical one which goes the heart of how presidents behave in office and which has yet to be fully explored. This article uses the cases of the Whig presidents to argue that the fundamental reason for presidents evolving in office is, at its core, constitutional. Specifically, that the logic of the office's structure, duties, and powers, orients presidents to embrace a robust understanding of executive authority and empowers them to utilize that authority expansively.

The Whig presidents are useful cases for examining this phenomenon because as members of a party whose defining organizational principle was opposition to executive power, these presidents act as least likely cases for candidates who would embrace an expansive understanding of executive power once in office. That is, if ever we were to expect presidents to choose not to robustly exercise their office's authority, it would be those affiliated with a party philosophically committed to a weak executive. This tendency is even more likely when we consider that the party system of the time emphasized partisan loyalty above the individual views of presidential candidates and provided a substantial amount of procedural and administrative order.[2] Thus, the Whig presidents would have felt substantial institutional and political pressure to remain within the mainstream of their party and uphold the party's views, the central one being an opposition to executive power.

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[1]Roger Sherman in Max Farrand, ed., *The Records of the Federal Convention* (New Haven, CT: Yale University Press, 1966), 1:65.

[2]James W. Ceaser, *Presidential Selection: Theory and Development* (Princeton: Princeton University Press, 1979), 161–62; Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920* (Cambridge: Cambridge University Press, 1982), 24–35; Richard Franklin Bensel, *The American Ballot Box in the Mid-Nineteenth Century* (Cambridge: Cambridge University Press, 2004); Richard P. McCormick, *The Second American Party System: Party Formation in the Jacksonian Era* (Chapel Hill: The University of North Carolina Press, 1966).

As one of the only two major American political parties to lose its status as a major party and disintegrate,[3] the Whig Party itself has attracted a fair amount of scholarly interest.[4] Similarly, the Whigs' contributions to American constitutionalism have been highlighted in research on American political thought and on the presidency.[5] The Whig conception of the presidency has even received attention in the literature on its applicability to other presidents who were not themselves members of the Whig Party, such as William Howard Taft and Barack Obama.[6]

Yet the connection between the Whig presidents and how they relate to their party's conception of their office remains relatively understudied. David Crockett examined the Whig presidents primarily as establishing "the template for presidential oppositional leadership," while Stephen Skowronek has argued that in the framework of political time the Whig presidents operated in "the politics of preemption" pushing back against the dominant Jacksonian regime.[7] Similarly, in their study of the unitary executive, Steven Calabresi and Christopher Yoo provide an overview of how each of the Whig presidents utilized his constitutional authority but give only a passing mention to how those actions were fundamentally at odds with their party philosophy.[8] Even Michael Gerhardt's study of the ways in which the Whig presidents rejected aspects of Whig Party doctrine does not connect that rejection with a deeper influence from the Constitution itself, instead arguing that it was more reflective of the Whig view being "unworkable" rather than being at odds with the presidency's underlying constitutional structure and function.[9]

This article seeks to expand the literature on both the Whigs and the constitutional presidency by demonstrating how the Whig presidents' rejection of their party's understanding of the presidency is grounded in the constitutional logic of the office itself.[10] Examining these cases will provide us with two major insights.

First, we will see how the Constitution orients individuals in office to embrace a robust understanding of executive power. Second, we can evaluate the ways in which the Whig conception of the office is incompatible and actively at odds with the structural incentives built into the office by the Constitution. In viewing the Whig presidency as at odds with the office's constitutional logic, we may also observe how the Whig position is "constitutionally illogical," insofar as it attempts to resist, ignore, and overcome the presidency's inherent constitutional logic as derived from its structure, duties, and powers. Undertaking this examination through these cases not only extends the literature on constitutional presidential power but also the growing body of research on the ways in which constitutional structures continue to influence institutional and political development.[11]

These examples will also enable us to see how claims of executive deference by presidents and presidential candidates often understate or misunderstand the ways in which the constitutional system requires a strong presidency and constructs the office to incentivize presidents to fully utilize the authority available to them. Furthermore, they will show how some ideas which may be "layered" on top of the constitutional framework can be rejected when they are too fundamentally opposed to, or "disharmonic" with, the constitutional baseline.[12] Relatedly, in observing how these presidents challenged the Whig conception, we will see the ways in which presidents may contribute to their office's ideational development, engaging in a "constitutional construction" that prioritizes and promotes certain institutional views of their office at the expense of others, setting precedents for later presidents.[13] This is particularly important in the case of the Whigs because had the Whig conception been fully embraced and institutionalized by the Whig presidents, it would have presented a completely different understanding of executive authority in the American system and could have significantly altered the trajectory of the office's institutional development. Thus, comprehending why the Whig presidents *did not* institute their own party's vision of their office is important for fully assessing the maturation of the executive in the constitutional system. Moreover, such an assessment extends

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[3]The other being the Federalist Party.

[4]For the most prominent studies of the Whigs as a party and social-political movement see Michael F. Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (Oxford: Oxford University Press, 1999); and Daniel Walker Howe, *The Political Culture of the American Whigs* (Chicago: University of Chicago Press, 1979); Thomas Brown, *Politics and Statesmanship: Essays on the American Whig Party* (New York: Columbia University Press, 1985).

[5]For a sampling of this varied literature see Kimberly C. Shankman, *Compromise and the Constitution: The Political Thought of Henry Clay* (Lanham, MD: Lexington Books, 1999); Peter Charles Hoffer, *Daniel Webster and the Unfinished Constitution* (Lawrence, KS: University Press of Kansas, 2021); James W. Ceaser, *Designing a Polity: America's Constitution in Theory and Practice* (Lanham, MD: Rowman & Littlefield, 2011), 132–35; James W. Ceaser, *Nature and History in American Political Development* (Cambridge, MA: Harvard University Press, 2006), 35–40; David K. Nichols, "Congressional Dominance and the Emergence of the Modern Presidency: Was Congress Ever the First Branch of Government?" in *Separation of Powers and Good Government*, ed. Bradford P. Wilson and Peter W. Schramm (Lanham, MD: Rowman & Littlefield Publishers, 1994), 113–29; William S. Stokes, "Whig Conceptions of Executive Power," *Presidential Studies Quarterly* 6, no. 1/2 (Winter-Spring, 1976): 16–35.

[6]For the former see Michel J. Korzi, "Our Chief Magistrate and His Powers: A Reconsideration of William Howard Taft's 'Whig' Theory of Presidential Leadership," *Presidential Studies Quarterly* 33, no. 2 (June 2003): 305–24; for the latter see Jasmine Farrier, "The Law: Barack Obama and Budget Deficits: Signs of a Neo-Whig Presidency?" *Presidential Studies Quarterly* 41, no. 3 (September 2011): 618–34.

[7]David A. Crockett, *The Opposition Presidency: Leadership & the Constraints of History* (College Station: Texas A&M University Press, 2002), 57–60; Stephen Skowronek, *The Political Presidents Male: Leadership from John Adams to Bill Clinton* (Cambridge: Harvard University Press, 1997), 43–45.

[8]Steven G. Calabresi and Christopher S. Yoo, *The Unitary Executive: Presidential Power from Washington to Bush* (New Haven, CT: Yale University Press, 2008), 130–38, 144–51.

[9]Michael J. Gerhardt, *The Forgotten Presidents: Their Untold Constitutional Legacy* (Oxford: Oxford University Press, 2013), 26.

[10]For a detailed description of the presidency's constitutional logic, see Jordan T. Cash, *The Isolated Presidency* (Oxford: Oxford University Press, 2023), 12–45.

[11]For examples of this expansive literature see Ceaser, *Presidential Selection*; David K. Nichols, *The Myth of the Modern Presidency* (University Park: The Pennsylvania State University Press, 1994); Joseph M. Bessette, *The Mild Voice of Reason: Deliberative Democracy and American National Government* (Chicago: University of Chicago Press, 2000); Keith E. Whittington, *The Political Foundations of Judicial Supremacy: The Presidency, The Supreme Court, and Constitutional Leadership in U.S. History* (Princeton, NJ: Princeton University Press, 2007); William F. Connelly, *James Madison Rules America: The Constitutional Origins of Congressional Partisanship* (New York: Rowman & Littlefield, 2010); Matthew S. Brogdon, "Constitutional Text and Institutional Development: Contesting the Madisonian Compromise in the First Congress," *American Political Thought* 5, no. 2 (Spring 2016): 219–49; Cash, *Isolated Presidency*.

[12]Jeffrey K. Tulis, *The Rhetorical Presidency* (Princeton: Princeton University Press, 1987), 17–18; Gary Jeffrey Jacobsohn, *Constitutional Identity* (Cambridge: Harvard University Press, 2010), 1. For other works which address concepts of "constitutional disharmony" or "institutional layering" see Justin Buckley Dyer, *Natural Law and the Antislavery Constitutional Tradition* (Cambridge: Cambridge University Press, 2012); Stephen F. Knott, *The Lost Soul of the American Presidency: The Decline into Demagoguery and the Prospects for Renewal* (Lawrence: University Press of Kansas, 2019); Elvin T. Lim, *The Lovers' Quarrel: The Two Foundings & American Political Development* (Oxford: Oxford University Press, 2014); Jeffrey K. Tulis and Nicole Mellow, *Legacies of Losing in American Politics* (Chicago: The University of Chicago Press, 2018).

[13]For a discussion of the concept of "constitutional construction" see Keith E. Whittington, *Constitutional Construction: Divided Powers and Constitutional Meaning* (Cambridge, MA: Harvard University Press, 2001). For scholarship on how presidents act in shaping the presidency, see Karlyn Kohrs Campbell and Kathleen Hall Jamieson, *Presidents Creating the Presidency: Deeds Done in Words* (Chicago: University of Chicago Press, 2008); and Daphna Renan, "Presidential Norms and Article II," *Harvard Law Review* 131 (2018): 2189–282.

recent and emerging research on the role of ideas in American political development.[14]

These cases also run against the idea that the traditional constitutional presidency was weak and that it was only with the coming of the modern presidency that the presidency became truly powerful.[15] By showing how these presidents robustly exercised executive power despite their initial ideological resistance, this study builds on the growing literature illustrating significant continuity between the "traditional" and "modern" presidencies.[16]

To explore these various issues, I first describe the Whig view of the presidency, focusing on the Whigs' understanding of the president's relationship to the administration and to Congress. From there, I examine each of the Whig presidents, highlighting their promises of fidelity to Whig Party doctrine as candidates before illustrating how each repudiated the Whig conception of the presidency once in office.

1. The Whig conception of the presidency

As noted at the beginning of this article, the concept of a weak executive is not new to American political and constitutional thought, but it was only in the 1830s that general fear of executive authority was institutionalized into a political party ideologically dedicated to restraining the executive branch: the Whig Party. Taking its name from the British and American Whigs who had opposed kingly power in the seventeenth and eighteenth centuries, the Whig Party sought to constrain a presidency it believed had become monarchical during Andrew Jackson's administration. As summarized by William Stokes, opposition to "executive usurpation" was "the main issue around which the Whig Party was formally established."[17] To the Whigs, the expansion of presidential power threatened to unbalance the entire constitutional system. It was in response to this perceived threat that the Whigs, led by their most significant and thoughtful leaders, Henry Clay and Daniel Webster, developed an alternative understanding of the presidency, one which envisioned a severe reduction in the office's powers and moved the executive closer to being a mere instrument for enacting Congress' will.

The specific aspects of the Whig conception of the presidency can be divided into two overarching categories: administrative and legislative. In each category, we see that the Whigs attempted to limit the personal discretion of the president as much as possible, as well as to restrict his capacity for serving as a national leader who could influence the people or the other branches.

Administratively, we see these restrictions in two different areas: 1) limiting the president's removal power; and 2) using the cabinet as an intra-executive check. With regard to the removal power,

the Whigs rejected the idea that the president had the authority to unilaterally remove officials in the executive branch. The Constitution itself says nothing about executive removals, although the First Congress—led by James Madison—endorsed the view that the president constitutionally possessed a unilateral removal power.[18] Despite this precedent, the Whigs gravitated toward two interpretations of the removal power that had been rejected by the First Congress. The first of these rival constructions, known as "senatorial consent," argued that just as the president required the Senate to confirm appointments, he needed the Senate to confirm removals.[19] The second, defined as "congressional delegation," argued that Congress could delegate the removal power to any institution it liked, including to itself.

In addition to reducing the president's basic removal authority, these interpretations would, if implemented, severely inhibit the president's control of the administration. This becomes especially clear when we consider the broader institutional effects of these different interpretations. Defenders of unilateral presidential removal insisted that it was necessary to ensure the members of the administration remained responsible to the president, as they would be dependent on him for their positions. The president would, in turn, be reliant on the people for his position. Thus, by having the administration responsible to the president, and the president responsible to the people, it created, in Madison's words, "a chain of dependence" which ended "in the supreme body, namely, in the people."[20]

The Whigs, however, had a different view of administrative responsibility. While they believed responsibility was critical to republican government, they insisted that it would be better preserved if the Senate was also involved in removals, as it was only Congress, not the president, who truly represented the American people.[21] For bureaucrats to be directly responsible to the president was, in their view, dangerous, as it enabled the president to utilize the executive bureaucracy to carry out his will rather than the law. This concern became especially prominent as Jackson began implementing the infamous "spoils system" of executive patronage, whereby the president would remove officials and replace them with his own partisan supporters.[22] Under this system, the Whigs feared the president could transform the bureaucracy, making it a tool for his personal aggrandizement and for pursuing his policy goals at the expense of the other branches. Clay insisted that "the bravest man in office, whose employment and bread depend upon the will of the President, will quail under the influence of the power of dismission" so that even "if opposed in sentiments

[14]John A. Dearborn, *Power Shifts: Congress and Presidential Representation* (Chicago: University of Chicago Press, 2021); Verlan Lewis, *Ideas of Power: The Politics of American Party Ideology Development* (Cambridge: Cambridge University Press, 2019).

[15]Fred I. Greenstein ed., *Leadership in the Modern Presidency* (Cambridge, MA: Harvard University Press, 1988); Mark J. Rozell and William D. Pederson, ed., *FDR and the Modern Presidency: Leadership and Legacy* (Westport, CT: Praeger Publishers, 1997); Malcom T. Shaw, ed. *The Modern Presidency: From Roosevelt to Reagan* (New York: Harper & Row, 1987); James P. Pfiffner, *The Modern Presidency* (Boston: Bedford/St. Martin's, 2000); Lewis L. Gould, *The Modern Presidency* (Lawrence, KS: University Press of Kansas, 2003).

[16]Jeffrey K. Tulis, "The Constitutional Presidency in American Political Development," in *The Constitution and the American Presidency*, ed. Martin Fausold and Alan Shank (Albany, NY: SUNY Press, 1991), 133–146; Ceaser, *Presidential Selection*; Nichols, *Myth*; Daniel Galvin and Colleen J. Shogan, "Presidential Politicization and Centralization across the Modern-Traditional Divide," *Polity* 36, no. 3 (April 2004): 477–504.

[17]Stokes, "Whig Conceptions," 17.

[18]For an overview of the removal power debate in the First Congress see J. David Alvis, Jeremy D. Bailey, and F. Flagg Taylor IV, *The Contested Removal Power, 1789-2010* (Lawrence, KS: University Press of Kansas, 2013), 16–47; Saikrishna Prakash, "New Light on the Decision of 1789," *Cornell Law Review* 91, no. 5 (July 2006), 1021–78. For the full removal power debate in Congress see *Annals of Congress*, 1st Congress, 1st Session, House, 387–96, 473–82, 505–21, 601–08.

[19]Interestingly, this view of the removal power had been put forward by Alexander Hamilton in "Federalist 77." See Alexander Hamilton, "Federalist 77," in Alexander Hamilton, James Madison, and John Jay, *The Federalist*, ed. J.R. Pole (Indianapolis, IN: Hackett Publishing Company, Inc., 2005), 407.

[20]*Annals of Congress*, House of Representatives, 1st Congress, 1st Session, 518.

[21]Alvis, Bailey, and Taylor, *Contested Removal Power*, 90.

[22]For a discussion of the origins of the spoils system and how it was employed see Matthew A. Crenson, *The Federal Machine: Beginnings of Bureaucracy in Jacksonian America* (Baltimore, MD: John Hopkins University Press, 1975); Scott C. James, "Patronage Regimes and American Party Development from 'The Age of Jackson' to the Progressive Era," *British Journal of Political Science* 36, no. 1 (January 2006): 39–60; Joseph Postell, *Bureaucracy in America: The Administrative State's Challenge to Constitutional Government* (Columbia, MO: University of Missouri Press, 2017), 95–126.

to the administration, he will begin by silence, and finally will be goaded into partisanship."[23] Similarly, Webster declared that the president's removal power had resulted in officeholders thinking of themselves as "mere agents and servants of the appointing power, and not agents of the Government or the country."[24] Such a situation, if allowed to persist, would prove "fatal to our institutions and liberty."[25]

Running concurrent with the argument about who the bureaucracy would truly be responsible to, the Whigs insisted that the president's administrative power must be checked in order to preserve "the stability of Government."[26] Including the Senate in removals would serve precisely this purpose, as presidents who had to gain the Senate's consent to remove administrative officials would be unable to remove officers for transient or political reasons based on ideological or partisan disagreements. Similarly, if Congress were able to delegate the removal power to other institutions, including itself, it could prevent the president from turning the administration into a compliant extension of his will. As a result, the administrative application of the laws would not only remain stable, with a consistent coterie of officeholders, but those officeholders would gain a certain degree of independence from the president. As summarized by Alvis, Bailey, and Taylor, having Congress involved in removals would have "the effect of shielding administrators from politics and thereby yielding a stable administration free of political control."[27] Yet as Joseph Postell notes, the Whigs did not intend for the bureaucracy to be completely delinked and unaccountable to political actors; they simply insisted that administrators be accountable to Congress and not solely to the president.[28]

The Whigs' insistence on creating a degree of separation between the president and the administration to secure the rule of law and governmental stability was also reflected in their conception of the cabinet. In the Constitutional Convention, the delegates explicitly rejected proposals for an executive council that would be independent of the president and whose approval the president would need to act.[29] Additionally, the Constitution's text makes no direct reference to a cabinet, only noting that the president may ask for the opinions of the department heads in writing.[30] The creation of those departments, however, was left to Congress, and the degree to which the cabinet was consulted remained up to the president.[31]

To the Whigs, the constitutional ambiguity surrounding the cabinet created the opportunity to have an intra-executive check on the president. As part of their arguments against the removal power, the Whigs insisted that the cabinet was not responsible to the president. Rather, the president's only constitutional authority over the cabinet was to ask for members' opinions in writing. Outside of that, the cabinet was meant only to carry out the laws Congress passed, and the president's oversight of the executive offices could be changed by congressional action.[32] Moreover, as Congress created the cabinet offices, it could impose particular duties on the cabinet officers independent of the president. For example, Clay claimed that the structure of the Treasury Department effectively made the Secretary of the Treasury "the agent or representative of Congress, acting in obedience to their will, and maintaining a direct intercourse with them."[33] Webster similarly asserted that the president did not "have the power to control him [the Secretary], in all or any of his duties, while in office."[34]

While the effort to create space between the president and the cabinet aligns with the Whigs' pursuit of a more politically independent administration, the Whigs did not stop there. Instead, they sought to retroactively transform the cabinet into a kind of autonomous executive council that could act as an intra-executive check: executive activity would not be directed by the president, but by the cabinet, with decisions taken by majority vote. Under this system, the president would be reduced to merely be "the first among equals," having an equal vote with the cabinet members he had appointed.[35] Thus, in the Whig vision, Congress would create the executive departments, be engaged in appointing and removing its officers via senatorial consent, and give the secretaries responsibilities independent of the president. The implementation of this form of cabinet government would effectively transform the constitutional system of separation of powers into a quasi-parliamentary system with de facto legislative supremacy.

That the Whigs aimed at legislative supremacy becomes even clearer when we examine how they viewed the president's proper relationship to lawmaking. Constitutionally, the president is required to be involved at the beginning and the end of the legislative process—the former through the requirement that the president provide Congress with "Information of the State of the Union" and recommend legislative measures and the latter through the presentment clause requiring the president to either sign or veto legislation. The Whigs sought to interpret these clauses narrowly and limit the president's influence in legislating as much as possible. As defined by a Whig-controlled Senate Foreign Relations Committee, the executive's role was "to follow, not to lead, to fulfill, not to ordain, the law; to carry into effect, […] the legislative will."[36]

Regarding the president's duty to recommend measures to Congress, the Whigs emphasized the fact that while the president may make recommendations, Congress is not obliged to follow them. In his inaugural address, William Henry Harrison went so far as to say that the president's duty to recommend was merely "a privilege he holds in common with every other citizen" and of

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[23] *Register of Debates*, Senate, 23rd Congress, 2nd Session, 514–15. By partisanship, Clay appears to mean that the administrators would be forced to be ideologically aligned with the president and his party, rather than carrying out the law in a non-partisan or ideologically neutral manner.

[24] *Register of Debates*, Senate, 23rd Congress, 2nd Session, 460.

[25] John C. Calhoun in James T. Morehead, "Report of the Committee on Retrenchment of the Senate of the United States," (Washington, DC: Gales and Seaton, 1844), 62. While the report was published in 1844, Calhoun's comments are from the committee's discussions in 1835.

[26] *Register of Debates*, Senate, 23rd Congress, 2nd Session, 458.

[27] Alvis, Bailey, and Taylor, *Contested Removal Power*, 27.

[28] Postell, *Bureaucracy*, 112.

[29] Farrand, ed. *Records of the Federal Convention*, 2:537–43.

[30] U.S. Const., Art. II, Sec.2.

[31] For a detailed account of how the cabinet was constructed and developed in the Washington, Adams, and Jefferson administrations see Lindsay M. Chervinsky, *The Cabinet: George Washington and the Creation of an American Institution* (Cambridge: Harvard University Press, 2020). For an interesting letter contrasting the different forms the cabinet took in the Washington and Jefferson administrations see Thomas Jefferson, "Letter to Destutt de Tracy, January 26, 1811," in *The Papers of Thomas Jefferson, Retirement Series*, ed. J. Jefferson Looney (Princeton: Princeton University Press, 2006), 3:336.

[32] *Register of Debates*, Senate, 23rd Congress, 1st Session, 66.

[33] Ibid., 65. Notably, Clay would later propose a constitutional amendment to have the Treasury Secretary appointed and removed exclusively by Congress. See *Congressional Globe*, 27th Congress, 2nd Session, Senate, 164.

[34] Ibid., 1665.

[35] Michael J. Gerhardt, "Constitutional Construction and Departmentalism: A Case Study of the Demise of the Whig Presidency," *University of Pennsylvania Journal of Constitutional Law* 12, no. 2 (April 2010): 437; Norma Lois Peterson, *The Presidencies of William Henry Harrison & John Tyler* (Lawrence: University Press of Kansas, 1989), 40.

[36] *U.S. Senate Journal*. 1844. 28th Congress, 1st Session, Appendix, 446.

no special weight.[37] Zachary Taylor was similarly blunt, insisting in a public letter during the 1848 election that "The personal opinions of the individual who may happen to occupy the Executive chair, ought not to control the action of Congress upon questions of domestic policy."[38] The president's constitutional obligation to recommend legislation and orient Congress toward particular policy measures was not, therefore, particularly important or even necessary. Congress was meant to hold the initiative on legislation, and while the Whigs wanted the legislature to be involved in overseeing executive administration, they held a strict view of separation of powers moving the other way. As stated by Harrison, the Whigs could "not conceive" of an interpretation of the Constitution that would "constitute the President a part of the legislative power."[39]

The Whigs' defense of congressional authority was particularly vehement in regard to the veto power, which they vigorously attacked and sought to confine by defining the specific circumstances under which it could be employed. To the Whigs, the veto was suitable only when legislation was clearly unconstitutional and should not be used on policy grounds. To allow one man to substitute his own judgment for that of an entire legislative body struck the Whigs as fundamentally at odds with democratic republicanism. In response to Jackson's veto of the national bank—a central component of the Whigs' economic program—Clay argued that the veto was "hardly reconcilable with the genius of representative government" and would become "totally irreconcilable with [republican government], if it is to be frequently employed in respect to the expediency of measures, as well as their constitutionality."[40]

Notably, some Whigs even sought to prevent the president from using the veto for constitutional reasons in certain circumstances. Webster, while admitting Jackson's bank veto was, strictly speaking, constitutional, insisted that because the bank issue had been deliberated and approved by previous Congresses and presidents—George Washington and James Madison, respectively—Jackson did not have the "right of individual judgment on constitutional questions." In Webster's view, presidents had to consider past legislative and executive precedents in determining if a veto was appropriate. A president could utilize his constitutional judgment in vetoing legislation only if the subject of that legislation had not previously been passed by Congress and signed into law by a president. If it had, Webster argued, then the sitting president must defer to that prior judgment, for "when a law has been passed by Congress, and approved by the president, it is now no longer in the power, either of the same president or his successors, to say whether the law is constitutional or not." Instead, the determination of the law's constitutionality becomes "a judicial question, and a judicial question alone." Moreover, if the judiciary weighs in and upholds the law—as the Supreme Court had done with the national bank in *McCulloch v. Maryland* (1819)—that further limited the president's veto discretion. Ultimately, if a president vetoed a bill whose subject had previously been deemed constitutional by all three branches of government, then he was utilizing executive power in a way that was "purely despotic."[41]

Of course, none of these restrictions on the veto power are in the Constitution, and as the veto became a more prominent tool of presidential policymaking the Whigs looked for other ways to restrict this potent weapon in the president's arsenal. The most forceful method pursued by the Whigs was to amend the Constitution and allow Congress to override a presidential veto by a simple majority vote. Given that bills already require a congressional majority to pass, such an amendment would have practically nullified the veto as a power with any practical effect. Indeed, in arguing for the amendment, Clay "admitted that the principles he had laid down would, if carried fairly out, lead to the abolition of the veto altogether, as inconsistent with the fundamental axiom of free government," but he tempered his amendment to only change the override threshold because "this, like other reforms, should be introduced slowly and with circumspection, without suddenly rushing from one extreme to another."[42] While the amendment did not pass, its proposal, and Clay's admission that the principles behind it could lead to abolishing the veto altogether, is demonstrative of the Whigs' intense hostility to the veto. The fact that the veto was seen by many of the Founders—including some Anti-Federalists—as critical to securing executive independence further suggests that the Whigs sought to make the president functionally dependent upon Congress and unable to defend the executive branch from congressional encroachment.[43]

Through this examination, we can see that the Whigs had a cohesive conception of how the presidency should operate both administratively and legislatively. Administratively, the Whigs emphasized the executive's role as carrying out laws passed by Congress and argued that the president's personal control of the administrative bureaucracy should be limited to ensure that Congress' will is properly carried out. Moreover, the cabinet was meant to be akin to an independent constitutional council and transform the president from the head of the executive branch to merely the chairman of a committee of cabinet secretaries. Legislatively, the president was meant to be deferential to Congress in the creation of policy, adhering to the principle that "the Executive ought to have no agency in the formation of laws."[44] Yet as we shall see, the Whig presidents found much to object to in the Whigs' attempts to turn the constitutional arrangement of separation of powers into a system of legislative supremacy.

2. Whig presidents rejecting the Whig presidency

Throughout its short existence from 1833 to 1856, only two Whig Party nominees were elected to the presidency: William Henry Harrison in 1840 and Zachary Taylor in 1848. The other two Whig presidents, John Tyler and Millard Fillmore, had been elected vice president alongside Harrison and Taylor, respectively, and acceded to the presidency only upon the death of their predecessors. During

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[37]William Henry Harrison, "Inaugural Address," *The Avalon Project.* https://avalon.law.yale.edu/19th_century/harrison.asp.

[38]Zachary Taylor, "Letter to J.S. Allison, April 22, 1848," quoted in Henry Montgomery, *The Life of Major General Zachary Taylor: Twelfth President of the United States* (Auburn: Derby, Miller & Company, 1850), 384.

[39]Harrison, "Inaugural Address."

[40]*Register of Debates*, Senate, 22nd Congress, 1st Session, 1265.

[41]*Register of Debates*, Senate, 22nd Congress, 1st Session, 1221–40. For more on Webster's arguments against Jackson's Bank Veto see Gerard N. Magliocca, *Andrew Jackson and the Constitution: The Rise and Fall of Generational Regimes* (Lawrence: University Press of Kansas, 2007), 54–55.

[42]*Congressional Globe*, 27th Congress, 2nd Session, Senate, 166.

[43]For examples of Founders citing the veto as needed for executive independence see Hamilton, "Federalist 73," 394; Robert J. Spitzer, "The President's Veto Power," in *Inventing the American Presidency*, ed. Thomas E. Cronin (Lawrence: University Press of Kansas, 1989), 166–67; Herbert J. Storing, *What the Anti-Federalists Were For: The Political Thought of the Opponents of the Constitution* (Chicago: University of Chicago Press, 1981), 61.

[44]*Congressional Globe*, 27th Congress, 2nd Session, Senate, 164.

their administrations, the Whig presidents consistently rejected the view of their office proposed by their party. In doing so, they demonstrate the ways in which the office orients presidents to view themselves and their powers in particular ways, revealing the Whig conception of the presidency to be incompatible with the office created by the Constitution. In examining the four Whig presidents, I begin by noting how they adhered to Whig principles of executive deference prior to becoming president and then show how each president came to reject those principles once in office.

2.1. William Henry Harrison

The first Whig president, William Henry Harrison, was the Whigs' answer to Andrew Jackson. Like Jackson, Harrison rose to national prominence by fighting Native Americans on the frontier, famously earning his nickname "Tippecanoe" from one of those battles. While Harrison's military career initially made him appear as something of a political enigma, he successfully defeated Clay in the 1840 Whig Convention to become the party's nominee. In an effort to shore up his Whig bona fides, Harrison gave speeches that simultaneously "articulated fundamental Whig values and advanced his political objectives."[45] He spoke out against the spoils system of executive patronage, contending that it allowed good men to be removed from administrative positions "without cause or provocation save a difference of opinion."[46] Similarly, he reminded audiences that he had "over and often" argued that "the President of this Union does not constitute any part or portion of the Legislative body" and "that the Executive should not by any act of his forestall the action of the National Legislature."[47] Thus, on the two major axes of the Whig critique of executive power, Harrison demonstrated he was aligned with the party.

The election of 1840 saw the highest voter turnout of any presidential election to that point—80.2 percent—and Harrison decisively defeated Jackson's hand-picked successor, incumbent president Martin Van Buren, winning an Electoral College majority of 234 to 60. With Harrison as their standard-bearer, the Whigs also won large majorities in both houses of Congress.[48] It was the first—and last—time that the Whigs would have unified control of both Congress and the presidency.

The Whigs' great triumph was reflected in Harrison's inaugural address, which largely encapsulated the Whig view of the presidency. In this address—the longest given by any president—Harrison insisted that the "great danger to our institutions" came primarily from "the accumulation in one of the departments of that [power] which was assigned to others" and made it clear that it was the executive who was most at fault in drawing power into itself. Thus, it was his intention "to arrest the progress of that tendency," and he even promised "that under no circumstances will I consent to serve a second term."

Beyond those matters he considered "defects of the Constitution"—like the lack of presidential term limits—Harrison argued that those powers the president did have should be narrowly construed. As aforementioned, Harrison insisted the president's constitutional duty to recommend measures to

Congress was effectively on the same level as that of a private citizen and "was not intended to make him the source in legislation."[49] Adapting Alexander Hamilton's argument in *Pacificus I* that the Constitution "completely lodged" executive power in the president,[50] Harrison insisted that the Constitution vested "all legislative power" in Congress, and to except any part of the legislative power as belonging to the president "would be a solecism in language."[51]

Such a view naturally had implications for the veto power, and Harrison noted that the ability of one man to have a negative on the legislature seems "to be an incongruity in our system." Nonetheless, he acknowledged the expediency of the veto and was careful not to attack it in and of itself. Instead, Harrison approached the veto historically, noting that many state constitutions did not give their executives veto authority at the time of the Founding and contending that the first six presidents—Washington through John Quincy Adams—did not use the veto "to assist or control Congress […] in its ordinary legislation." These precedents enabled Harrison to claim that the veto was meant to be used only for legislation that was unconstitutional or passed without proper deliberation. Yet even then, in comparing the president's veto to the judiciary's power of judicial review, Harrison implied, as Webster had before him, that questions of a law's constitutionality should be handled primarily, if not solely, by the Supreme Court rather than the president.

Apart from critiquing the presidency's role in legislative matters, Harrison reiterated many of the standard Whig complaints regarding executive administration. Attacking the president's control over patronage, Harrison insisted that such a system enabled the chief executive to leverage control over state governments, the public purse, and even the "elective franchise" itself. Indeed, Harrison went so far as to declare that it was "a great error in the framers of the Constitution" to not have the Secretary of the Treasury appointed entirely independently of the president, and he committed himself to not removing a Treasury Secretary without informing Congress of the specific circumstances.[52]

Harrison's inaugural address provides a concise summation of the Whig view of the presidency, with the added nuance of a new president committing himself to govern in line with that conception. Yet these commitments soon ran up against the realities of governing, and while Harrison's administration was the shortest of any president—he died a month into his term—we can see he was already beginning to chafe at the restrictions imposed by his Whig principles.

Indeed, within the inaugural address itself there are some subtle hints that Harrison was thinking beyond the confines of the Whig presidency. Despite his apprehensions about the veto, Harrison praised it as potentially "productive of great good" and "one of the best safeguards to the Union." He also noted that the president was uniquely situated to use the veto properly, as his mode of election granted him "more independence and freedom" as well as a national perspective from "having his constituents in every section." In the hands of such a nationally minded officer attentive to the needs of "all parts of the Union," the president will be incentivized to protect numerical minorities from majority tyranny and

[45]Richard J. Ellis, *Old Tip vs. The Sly Fox: The 1840 Election and the Making of a Partisan Nation* (Lawrence: University Press of Kansas, 2020), 187.

[46]"Speech of Gen. Harrison," *Madisonian*, August 25, 1840 (from the *Cincinnati Gazette*); see also Ellis, *Old Tip*, 190.

[47]"Gen. Harrison at Dayton," *Daily Republican Banner*, September 21, 1840; see also Ellis, *Old Tip*, 192.

[48]Peterson, *Presidencies*, 29.

[49]Harrison, "Inaugural Address."

[50]Alexander Hamilton, "Pacificus I," in Alexander Hamilton and James Madison, *The Pacificus-Helvidius Debates of 1793-1794: Toward the Completion of the American Founding*, ed. Morton J. Frisch (Indianapolis, IN: Liberty Fund, Inc., 2007), 13.

[51]Harrison, "Inaugural Address."

[52]Ibid.

could use the veto to push back on a Congress that might be "controlled by local interests and sectional feelings" and thereby protect the rights of minorities from oppression by congressional majorities. Thus, unlike many Whigs, Harrison specifies that there are three circumstances in which the veto might be used: "first, to protect the Constitution from violation; secondly, the people from the effects of hasty legislation where their will has been probably disregarded or not well understood, and, thirdly, to prevent the effects of combinations violative of the rights of minorities."[53] Notably, the fact that Harrison bases this argument primarily on the notion that the president is elected by the nation as a whole also pushes against Whig principles, which held that the president could not be considered a national representative.[54] Harrison, therefore, not only expands the veto's uses beyond what the Whigs considered acceptable, but he does so using an essentially Jacksonian premise.

In office, Harrison continued to struggle with conforming to the Whig view of the presidency. While congressional Whig leaders like Clay sought to help shape Harrison's cabinet, the new president did not take kindly to being dictated to. In one particularly heated meeting with Clay, Harrison is reported to have reprimanded the Kentucky senator, telling him "Mr. Clay, you forget that *I* am the President."[55] Similarly, when Clay pushed for Harrison to call a special session of Congress—even drafting a version of a presidential proclamation for Harrison to use—the new president accused the senator of "us[ing] the privilege of a friend to lecture me" and informed Clay that he would make the decision on his own in good time.[56] While Harrison did later call for a special session, it was primarily due to the looming financial crisis, rather than to simply pass the Whig agenda, as Clay wanted.[57] Both instances suggest Harrison would not be reflexively deferential to Congress and would certainly not let his decisions be made by party leaders.

The lack of deference displayed by Harrison extended to the cabinet. The new president initially pledged that he would run his cabinet in alignment with Whig doctrine. Decisions would be made by the cabinet with each member—including the president—having one vote. It did not take long, however, for Harrison to become frustrated with this arrangement. This becomes particularly clear from an anecdote concerning the appointment of the Territorial Governor of Iowa. Reportedly, Harrison and his cabinet disagreed on who should be appointed to the post, the cabinet supporting one James Wilson and Harrison supporting one John Chambers. When Webster—now serving as Secretary of State—informed the president that he had been outvoted, Harrison wrote on a piece of paper and asked Webster to read it. The paper simply read "William Henry Harrison, President of the United States." With that, Harrison angrily told his cabinet "And William Henry Harrison, President of the United States, tells you, gentlemen, that, by G—, John Chambers shall be Governor of Iowa."[58] Overriding his cabinet and implicitly rejecting the Whig view of the cabinet, Harrison flexed his constitutional muscle and John Chambers became Governor of Iowa.

Harrison also failed to live up to the Whig ideal of abandoning executive patronage. In his inaugural address, Harrison seems to have accepted the removal power debate as settled, noting that the president had "the power of removal with or without cause."[59] Moreover, despite his stated reluctance, once in office Harrison was not afraid to use the removal power. As noted by Postell, Harrison "removed administrative officials at a higher rate than either of his Democratic predecessors."[60] One might reasonably argue that Harrison was forced to conduct a sweep of the administration due to the fact that Jackson and Van Buren had spent the previous 12 years staffing it with Democrats who would be resistant to Harrison's constitutional, political, and policy goals. Furthermore, as the Whigs were still a young party, patronage was necessary to build and reinforce party organizations. While these are reasonable political explanations, we can also see how Harrison's shift was necessitated by the constitutional structure and speaks to the instability of the Whig position. For a president to be effective as the head of an independent branch of government, the executive branch must be responsible to him, which requires that lower administrators generally be aligned with his views and policy goals. By replacing Democrats with Whigs, Harrison could be more confident that commands he gave would be carried out and not obstructed. Whig principles might prioritize stability in administration, but as Harrison shows, presidents will prioritize making their administrations responsible to them.

These actions indicate that Harrison was growing into the presidency and asserting its constitutional powers against a Whig conception of the office that sought to limit them. While it is impossible to say if Harrison would have continued exercising strong executive authority, he demonstrated a clear pattern of behavior during his month in office, one that would be followed by Vice President John Tyler when he became the first "accidental president."

2.2. *John Tyler*

Harrison's death from pneumonia only a month after taking the oath of office shocked the country, including Vice President John Tyler, who was home at his Virginia plantation when he received the news. Once informed, Tyler traveled back to Washington and appeared ready to carry out the Whig agenda. A former Democrat, Tyler had left the Democratic Party and joined the Whigs in direct response to what he saw as Jackson's abuses of executive power.[61] As a senator from Virginia, he echoed Clay and Webster in decrying Jackson's use of executive patronage as enabling the president to make sure "his will comes to take the place of law."[62] He also criticized Jackson's actions in removing deposits from the national bank, remarking to a correspondent that to "[c]oncede to the President the power to dispose of the public money as he pleases, and it is vain to talk of checker [sic] and balances."[63] Later, Tyler voted with the Whigs to censure Jackson and staunchly refused to expunge it even when instructed to do so by the Virginia state

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[53]Ibid.

[54]Jeremy D. Bailey, *The Idea of Presidential Representation: An Intellectual and Political History* (Lawrence: University Press of Kansas, 2019), 68–73.

[55]Harrison qtd. In Peterson, *Presidencies*, 34.

[56]William Henry Harrison to Henry Clay, March 13, 1841, in *The Papers of Henry Clay*, ed. Robert Seager II and Melba Porter Hay (Lexington: The University Press of Kentucky, 1988), 9:514; Holt, *Whig Party*, 127.

[57]Gerhardt, *Forgotten*, 30.

[58]Ibid., 34.

[59]Harrison, "Inaugural Address." For more on this point see Steven G. Calabresi and Christopher S. Yoo, *The Unitary Executive: Presidential Power from Washington to Bush* (New Haven, CT: Yale University Press, 2008), 131.

[60]Postell, *Bureaucracy*, 106.

[61]Jordan T. Cash, "The Isolated Presidency: John Tyler and Unilateral Presidential Power," *American Political Thought* 7, no. 1 (Winter 2018): 33–34. For a general description of Tyler's political thought see Dan Monroe, *The Republican Vision of John Tyler* (College Station: Texas A&M University Press, 2003).

[62]*Register of Debates*, Senate, 23rd Congress, 1st Session, 663–76.

[63]Lyon Gardiner Tyler, *The Letters and Times of the Tylers* (New York: De Capo Press, 1970), 1:490–91.

legislature. Rather than violate his conscience, Tyler resigned his Senate seat.[64] The resignation elevated Tyler in Whig circles, and when the 1840 election came around Tyler was made Harrison's running mate. His southern roots and personal devotion to Clay helped balance out the ticket, while his name contributed to the catchy alliterative slogan "Tippecanoe and Tyler, Too."

This background as well as Tyler's insistence during the campaign that he agreed with Harrison "on all major points"[65] lured the Whigs into believing they had nothing to fear from Tyler's accession to the presidency. Indeed, in his address upon assuming the presidency, Tyler struck the posture of a deferential Whig president. He expressed his willingness to restrain the executive's "constantly increasing" patronage and pledged not to remove any administration officials unless they were using their offices for partisan purposes.[66] Similarly, in his message to the special session of Congress that Harrison had called before his death, Tyler committed himself to "the patriotic desires of the late President" which implicitly included the Whig economic agenda and Whig institutional understandings.[67] Tyler's claims of Whig fidelity were so convincing that Clay commented to a correspondent that "I can hardly suppose that V.P. Tyler will interpose any obstacle to the adoption of measures on which the Whigs are generally united," and that he was more worried about intra-party factionalism than anything Tyler himself might do.[68]

Yet once secure in office, Tyler quickly rejected the Whigs' view of the presidency. When he was informed by Webster that the cabinet made all policy decisions based on majority vote—ignoring the Chambers episode—the new president replied that he would "never consent to being dictated as to what I shall or shall not do. I, as President, shall be responsible for my administration." Those cabinet members who disagreed were free to resign, as he believed "a Cabinet should be totally subordinate to the President and in absolute intellectual harmony with him."[69] When placed in the position to put the Whigs' notion of cabinet government into practice, Tyler explicitly refused.

In addition to rejecting a core tenet of the Whigs' administrative philosophy, Tyler rejected the Whigs' view that presidents should not be involved in lawmaking. When the majority-Whig Congress passed legislation for a new national bank—the cornerstone of the Whig economic program—Tyler took the bold step of vetoing it. Such an action should not have been much of a surprise given that Tyler had opposed the national bank for his entire political career, yet it nevertheless sent shockwaves through Washington. When the Whigs passed a second bank bill, Tyler vetoed it again. One Whig Congressmen bemoaned that Tyler had

revived "the condemned and repudiated doctrines and practices of the worst days of Jackson's rule."[70] Two days later, nearly the entire cabinet resigned in a choreographed display where each cabinet member presented their resignation to Tyler one-by-one over the course of several hours. Only Secretary of State Webster remained. That night the Whig caucus met in a public meeting and, after discussing their twin goals of restraining executive power and creating a national bank, expelled Tyler from the party, claiming they "can be no longer, in any manner or degree, justly held responsible or blamed for the administration of the executive branch of the government."[71] Clay went even further, claiming that Tyler was "like [Benedict] Arnold in England, a monument of his own perfidy and disgrace."[72]

The expulsion was an immense blow to Tyler politically. Distrusted by the Democrats and hated by the Whigs, he had no supporting coalition. Yet if the Whigs had hoped to somehow restrain executive power by stripping Tyler of his Whig affiliation, they achieved the opposite. Any hesitation Tyler may have had about dispensing with Whig notions of executive deference were tossed aside. Administratively, Tyler "did an abrupt about-face and began manipulating patronage with positively Jacksonian abandon," using the removal power to replace anti-Tyler Whigs with individuals, including Democrats, more aligned with his constitutional, political, and policy vision.[73] As Tyler himself admitted, he looked for those who "were Jackson men in the beginning and who fell off from his administration" and who "conform to my opinions on the subject of a National Bank."[74] Far from following the Whig view of administration, Tyler used his removal and appointment powers to shape the bureaucracy in his own ideological image.

Despite possessing majorities in both houses for the first two years of Tyler's administration, the Whigs were unable to restrain Tyler's use of the removal power. An attempt was made to pass a constitutional amendment limiting the president's removal authority, but like prior efforts to redefine the removal power, this amendment failed to pass Congress. Part of the reason for the failure might have been that congressional Whigs had different views on what the proper alternative to a presidential removal power should be, some arguing for senatorial consent and others for congressional delegation.[75] Whatever the cause, the end result was the same. Tyler was able to remove his political opponents and install political allies into positions throughout the bureaucracy.

On the legislative side, Tyler's bank vetoes were a clear repudiation of the Whig conception of the veto. Tyler used the veto both as a method of constitutional interpretation—defining the national bank as unconstitutional after previous Congresses, presidents, and courts had ruled it constitutional—and as a matter of policy, in direct contradiction of Whig economic doctrine. Tyler would go on to issue eight more vetoes on a range of matters, including blocking legislation on another Whig priority, internal improvements. Among presidents prior to Reconstruction, only Jackson issued more combined regular and pocket vetoes, with twelve to Tyler's ten. This relatively frequent use of the veto pen

[64] Gary May, *John Tyler* (New York: Henry Hold and Company, LLC, 2008), 45–46; Oliver Chitwood, *John Tyler: Champion of the Old South* (New York: Russell & Russell, Inc., 1964), 27–28.

[65] Peterson, *Presidencies*, 28.

[66] John Tyler, "Inaugural Message," in *A Compilation of the Messages and Papers of the Presidents*, 20 vols., ed. James D. Richardson (New York: Bureau of National Literature, 1897), 4:1891–92.

[67] John Tyler, "Special Session Message," in Richardson, *Compilation*, 4:1893–904; Robert J. Morgan, *A Whig Embattled: The Presidency Under John Tyler* (Lincoln: University of Nebraska Press, 1954), 19. For an analysis of Tyler's general rhetoric see David Zarefsky, "John Tyler and the Rhetoric of the Accidental Presidency" in *Before the Rhetorical Presidency*, ed. Martin J. Medhurst (College Station: Texas A&M University Press, 2008), 66.

[68] Henry Clay to Nathaniel Beverly Tucker, April 15, 1841, in *The Papers of Henry Clay*, 9:520.

[69] White, *Jacksonians*, 86; Peterson, *Presidencies*, 52; Robert Seager II, *And Tyler too: A Biography of John & Julia Gardiner Tyler* (New York: McGraw Hill Book Company, Inc., 1963), 162.

[70] Morgan, *Whig Embattled*, 45.

[71] "Congressional Whig Meeting, September 13, 1841," in *Niles National Register, From September, 1841, to March, 1842* 61, ed. Jeremiah Hughes (Baltimore: Exchange Place, 1842), 35–36; Seager, *And Tyler too*, 160–162; May, *Tyler*, 75–77.

[72] Henry Clay, "Speech to the Whig Caucus," September 13, 1841," in *Papers*, 9:608.

[73] Monroe, *Republican Vision*, 151; Gerhardt, "Constitutional Construction," 442.

[74] Tyler, *Letters*, 2:128.

[75] Cash, *Isolated Presidency*, 61.

earned Tyler the nickname of "Old Veto."[76] Unfortunately for Tyler, he also became the first president to have a veto overturned by Congress. Yet his major vetoes blocking the Whig economic agenda were sustained. Indeed, Tyler's actions were so successful that they induced the Whigs to try and change the Constitution itself. Clay and Massachusetts Representative—and former president—John Quincy Adams introduced a constitutional amendment to allow Congress to overturn presidential vetoes with a majority vote. Like the removal amendment and most efforts to override Tyler's vetoes, however, it too fell short of a two-thirds majority.[77] As a result, Tyler could use the veto freely and "reduced his congressional opponents to complete ineffectiveness in policymaking."[78]

Notably, Tyler also became the first president to use a signing statement for policy purposes, adding one with his signature for the Apportionment Act of 1842. Such a tactic has become common in the modern presidency but was still quite novel in the nineteenth century. In Tyler's signing statement, he expressed his opinion of the legislation, including his "*doubts*" about its constitutionality.[79] While he attempted to strike a deferential tone in the statement, the fact that he wrote one and questioned Congress' actions was enough to anger congressional Whigs. A House Select Committee led by Adams excoriated the statement as "a defacement of the public record and archives." The committee's report, drafted by Adams, went on to deliver a Whiggish rebuke to Tyler, claiming that "No power is given [the President] to alter, to amend, to comment, or to assign reasons for the performance of his duty" and that Tyler's "reasons form no part of the bill, and no instance has occurred, under the Constitution of the United States, of a bill to which the President has objected, becoming a law."[80] Despite these objections, Adams and his committee could not undo Tyler's statement, nor prevent him or future presidents from issuing similar signing statements and generally critiquing Congress' actions.[81]

While Tyler was far more active in the legislative process than the Whigs believed appropriate for a president, he had few successes in passing legislation, largely because neither party in Congress was allied with him. Nonetheless, he did have some policy victories. For example, Dan Monroe characterizes Tyler as "ben[ding] Congress to his will" in the negotiations over the Tariff of 1842.[82] Most of Tyler's achievements, however, came in foreign policy, and he illustrates how presidents can reorient the nation's diplomacy and force congressional debate.

This is most evident in Tyler's efforts to annex Texas. The Republic of Texas had been independent of Mexico since 1836 but had repeatedly expressed interest in joining the Union.[83] While his predecessors had demurred, Tyler made annexation a major policy objective during his term. He negotiated an annexation treaty with Texas without informing Congress, even using executive agents and secret service funds—money appropriated by Congress to cover expenses accrued for sensitive and secret

foreign negotiations—to finance naval operations in the Gulf of Mexico and assure Texas of military protection and support.[84] Even after the Senate rejected the treaty Tyler negotiated, the president was able to keep the issue alive. He innovatively proposed that Texas be annexed using the Constitution's admissions clause, which required only a joint resolution of both houses rather than the two-thirds Senate majority required for treaties. Tyler was so successful in framing the national debate around Texas that it became the central issue of the 1844 presidential election in which he was not even a candidate. When James K. Polk, a pro-Texas Democrat, defeated Clay in the election, Tyler used Polk's victory to push annexation through Congress, achieving his greatest legislative victory only days before leaving office "based largely on his use of prerogative powers."[85]

2.3. Zachary Taylor

Tyler's success in adding Texas to the United States had major geopolitical and military ramifications for the North American continent. As Mexico still considered Texas to be a part of its territory, its annexation by the United States set off a chain of events that eventually led to the Mexican-American War between 1846 and 1848. It was in that war that General Zachary Taylor came to national prominence and was courted by the Whigs to be their nominee in the 1848 election.

Like Harrison, Taylor's military background contributed to him being a mystery politically. Taylor had never served in political office and had never even voted before his own election.[86] The lack of political experience and Taylor's non-partisan, or even anti-party, stance meant that Taylor had to prove to the Whigs that he was actually one of them, especially on executive power.[87]

Taylor did this primarily through two public letters, known as the Allison letters for their recipient, Taylor's brother-in-law John Allison. In the first letter, Taylor made it clear where he stood on questions of executive power. He insisted the veto "should never be exercised except in cases of clear violation of the constitution, or manifest haste and want of consideration by Congress" arguing that prior presidents "have exercised undue and injurious influence upon the legislative department of the Government" and threatened to unbalance the constitutional system. Moreover, as aforementioned, he declared that

> The personal opinions of the individual who may happen to occupy the Executive chair, ought not to control the action of Congress upon questions of domestic policy nor ought his objections to be interposed where questions of constitutional power have been settled by the various departments of government, and acquiesced in by the people.[88]

He continued these themes in the second letter, noting that he had been "a Whig in principle" while serving in the Mexican War. Furthermore, Taylor insisted that he would not "lay violent hands indiscriminately" on officials who disagreed with him and was "not

[76]U.S. Senate, "Presidential Vetoes," accessed March 9, 2016, http://www.senate.gov/reference/Legislation/Vetoes/vetoCounts.htm; Crockett, *The Opposition Presidency*, 64; Seager, *And Tyler too*, 283.

[77]Gerhardt, *Forgotten*, 46–47.

[78]Pious, *American Presidency*, 64.

[79]John Tyler, "Special Message," June 25, 1842, in Richardson, *Compilation*, 5:2012-2013; Cash, *Isolated Presidency*, 57.

[80]House of Representatives Report no. 27-909, 1842.

[81]Cash, *Isolated Presidency*, 57.

[82]Monroe, *Republican Vision*, 143.

[83]For an overview of Tyler's efforts to annex Texas, as well as those of Texas President Sam Houston, see Jordan T. Cash, *Adding the Lone Star: John Tyler, Sam Houston, and the Annexation of Texas* (Lawrence: University Press of Kansas, 2024).

[84]Edward P. Crapol, *John Tyler: The Accidental President* (Chapel Hill: University of North Carolina Press, 2006), 217–18.

[85]Crockett, *Opposition Presidency*, 66. See also Cash, *Isolated Presidency*, 68–72; Cash, *Adding the Lone Star*, 66–86.

[86]Holt, *Whig Party*, 271.

[87]Elbert B. Smith, *The Presidencies of Zachary Taylor & Millard Fillmore* (Lawrence: University Press of Kansas, 1988), 40–41; Joel H. Silbey, *Party Over Section: The Rough and Ready Presidential Election of 1848* (Lawrence: University Press of Kansas, 2009), 61.

[88]Zachary Taylor, "Letter to J.S. Allison, April 22, 1848," quoted in Henry Montgomery, *The Life of Major General Zachary Taylor: Twelfth President of the United States* (Auburn: Derby, Miller & Company, 1850), 384. Italics are in the original.

expected to force Congress, by the coercion of the veto, to pass laws to suit me, or pass none."[89]

These assurances appeared to work, as the Whigs turned out to support Taylor for their nomination and, for the second and last time in their short history as a party, won a presidential election. Taylor's victory, however, was much closer than Harrison's had been 8 years earlier. Taylor and his Democratic opponent, Senator Lewis Cass of Michigan, won the same number of states—fifteen—but Taylor won the Electoral College 163 to 127.[90] In the congressional elections, the Whigs failed to take either house, making Taylor the only president other than Richard Nixon and George H.W. Bush to be popularly elected and have his party fail to win either house of Congress.

Nonetheless, Taylor followed Harrison and Tyler in using his first presidential address to affirm his belief in Whig principles and commit himself to upholding them during his presidency. On questions of constitutional interpretation he would not look to his own judgment but to "the decisions of the judicial tribunals established by its authority and to the practice of the Government under the earlier Presidents, who had so large a share in its formation." Similarly, in his relationship with Congress he recognized his duty to recommend measures but insisted that it would be up to "the wisdom of Congress itself, in which all legislative powers are vested by the Constitution."[91] Later, in his only message to Congress, he expounded on his view of the veto power, remarking that it was "an extreme measure, to be resorted to only in extraordinary cases, as where it may become necessary to defend the executive against the encroachments of the legislative power or to prevent hasty and inconsiderate or unconstitutional legislation."[92] Although it is notable that in his annual message Taylor—who had been president for several months by that point—added protecting the executive from legislative encroachment as a reason to use the veto, an exception the Whigs generally did not share and which he had not mentioned previously. Such an addition may, therefore, be indicative of Taylor identifying with his office and becoming more defensive of its constitutional and institutional authority.

Unfortunately for the Whigs' understanding of the executive, Taylor also followed Harrison and Tyler in not holding to his promises of executive deference. Even in his inaugural address, he implicitly acknowledged that the president had a unilateral removal power and once in office he freely engaged in shaping executive patronage to his liking.[93] As Calabresi and Yoo point out, "upon returning to office, the Whigs embraced the Jacksonian spoils system and removed subordinate executive branch officials freely and at will, just as they had done in 1841."[94] With regard to the cabinet, Taylor was willing to allow his subordinates to operate more independently, but he did not hesitate to personally direct them when he deemed it necessary, directly contradicting the Whig

view of the cabinet.[95] Moreover, it is quite notable that even while Taylor appeared to adhere to the Whiggish practice of having the cabinet deliberate on major appointments and policy issues, he did not have the cabinet vote on issues and "followed the advice of his cabinet only when it coincided with his own views."[96] Thus, far from seeing the cabinet as an equal check, he held himself as its members' superior from the start. That Taylor viewed the cabinet as subordinate and believed in a broad removal power becomes more evident when we consider that Taylor very nearly removed his entire cabinet after a few members were caught up in a corruption scandal.[97]

More seriously for the Whig view of the presidency, Taylor was proactive in recommending measures to Congress. In the aftermath of the Mexican War, there were still lingering questions surrounding how the territory the United States had acquired from Mexico might be integrated into the nation. Rather than waiting for Congress to deliberate and come up with a solution—as would be expected of a Whig president—Taylor moved first. In his only annual message, Taylor laid out a plan whereby Congress would grant California and New Mexico statehood regardless of whether they adopted slavery in their constitutions. In making this move, Taylor oriented Congress to face this question and exercised what William Howell refers to as the president's "first-mover advantage."[98] Whatever Congress debated concerning these territories now had to take Taylor's plan into account.

As the debate began, Taylor's proposal soon ran into substantial opposition, much of it emerging from the fact that California and New Mexico had climates that were generally unsuitable for the kind of slave economy that persisted in the old South, making it likely that they would enter the Union as free states. Southerners—including Southern Whigs—found this prospect unnerving, as the admission of two free states would decisively give free states an edge in the equally divided Senate.[99] Yet rather than sit back and allow Congress to hash it out independently, as Whig doctrine required, Taylor dove headlong into the debate, working to convince members of Congress to adopt his plan. These efforts, however, ultimately proved unsuccessful, as the politics of sectionalism and slavery overwhelmed Taylor's overtures. Instead, Clay forged a compromise that would admit California as a free state but which also added a variety of other proposals designed to mollify both North and South, including the abolition of the slave trade in Washington, D.C., a stronger fugitive slave law, and allowing for the rest of the land ceded by Mexico to be organized without any conditions on slavery.[100] Taylor staunchly opposed Clay's compromise and, once again departing from Whig principles, threatened to veto the bill if it passed.[101] Ultimately, Taylor's theoretical consistency was not tested, as he died of an illness in July 1850. But his involvement in the deliberations and apparent willingness to veto the burgeoning compromise shows that he had departed significantly from the Whig position of presidents not having any role in the legislative process. This trend continued as Vice President

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[89]Taylor qtd. In Holt, *Whig Party*, 361. See also Gerhardt, *Forgotten*, 68–69; Silbey, *Party Over Section*, 61.

[90]Notably, former President Martin Van Buren also ran as the nominee of the Free Soil Party, drawing votes from both the Democrats and the Whigs. While Van Buren has sometimes been accused of acting as a spoiler for Cass, particularly by splitting the Democratic vote in the critically important swing state of New York, recent scholarship suggests that Van Buren's presence had only a minimal impact on Taylor's ultimate victory. See Holt, *Whig Party*, 368; Silbey, *Party Over Section*, 144–45.

[91]Zachary Taylor, "Inaugural Address," *The Avalon Project* https://avalon.law.yale.edu/19th_century/taylor.asp.

[92]Taylor, "Inaugural."

[93]Ibid.

[94]Calabresi and Yoo, *Unitary Executive* 146.

[95]Calabresi and Yoo, *Unitary Executive*, 146-147; White, *Jacksonians*, 312.

[96]Gerhardt, *Forgotten*, 73; Calabresi and Yoo, *Unitary Executive*, 145.

[97]Gerhardt, "Constitutional Construction," 26–27.

[98]William G. Howell, *Power Without Persuasion: The Politics of Direct Presidential Action* (Princeton: Princeton University Press, 2003), 27.

[99]Gerhardt, *Forgotten*, 69–70.

[100]James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford, 1988), 70–71.

[101]Calabresi and Yoo, *Unitary Executive*, 144.

Millard Fillmore was thrust into becoming the second "accidental president".

2.4. Millard Fillmore

Of the four Whig presidents, Millard Fillmore was the only one to have risen through the ranks of the Whig Party. Fillmore had been in the trenches helping to build what became the Whig coalition in his home state of New York in the early 1830s, and when he was elected to Congress in 1832 he acted as a loyal soldier of the Whig opposition against Jackson and Van Buren. When the Whigs took control of the House in 1841 Fillmore was elevated to the powerful position of Chairman of the House Ways and Means Committee. From that post he battled directly with the apostate Tyler over tariff legislation and was one of the Whig leaders who organized the committee which charged the expelled Whig president with "executive usurpation."[102] This personal history of party loyalty and demonstrated ability in the halls of Congress led Whig Party leaders to consistently consider Fillmore for higher office. He was the Whig nominee for Governor of New York in 1844 and that same year was mentioned as potential running mate for Clay. In 1848, Fillmore finally received his chance, being nominated as Taylor's running mate. Once elected vice president, Fillmore sounded familiar Whig notes concerning the executive, asserting that with the Whigs in power "the will of the people, as expressed through their representatives in Congress, is to control" and will be strong enough to "not be defeated by the arbitrary imposition of the veto power."[103]

Yet when he acceded to the presidency upon Taylor's death, Fillmore immediately set about changing the administration to fit his preferences. In a powerful display of the removal power, Fillmore removed all the members of the cabinet and replaced them with his own appointees. Even with this new cabinet, however, Fillmore did not attempt to institute the cabinet government Whig doctrine expected. He consulted its members' opinions but did not put matters to a vote and he consistently made his own decisions on the proper course of action.[104] Nor does it appear that Webster—whom Fillmore had appointed Secretary of State, the same position he had held under Harrison and Tyler—ever seriously attempted to establish the cabinet as a check on Fillmore's power.

As his advice had been ignored in Taylor's patronage appointments, Fillmore did not hesitate to use the removal and appointment powers to fill the bureaucracy with Whigs who were more aligned with him.[105] During and after the debate on the Compromise of 1850, Fillmore made appointments strictly on the basis of whether the appointee supported the compromise, and he judiciously removed Democrats from their administrative positions so that pro-Compromise Whigs could take their place.[106] The result was that Fillmore "removed the largest number of political appointees of any president up until that time" and effectively "entrench[ed] the [Jacksonian] principle of rotation in office as a fact of constitutional life."[107] Such actions not only went against

the Whig view but illustrate once again that when confronted with the tension between Whiggish adherence to administrative stability and having an administration politically responsible to the president, the Whig presidents chose responsibility.

When it came to the Compromise of 1850, Fillmore had presided over the initial congressional debates in his vice presidential capacity as President of the Senate. In that role he had been careful not to involve himself, following the Whig principle of letting Congress deliberate freely and serving only as an impartial moderator. He did, however, personally support Clay's compromise and informed Taylor that, despite the president's opposition, if the omnibus bill containing Clay's proposals reached a tie vote in the Senate, he would use his constitutional tie-breaking vote to ensure its passage.[108]

As president, Fillmore maintained his support for the Compromise, but changed his tactics. Rather than abstaining from the legislative process as he had as vice president and as Whig principles dictated, Fillmore delved into the details, engaging with Congress to help break up what had originally been a large omnibus bill into five separate bills.[109] With the Compromise divided into different bills, Fillmore developed bipartisan coalitions alongside Democratic Senator Stephen Douglas of Illinois to pass each bill. While each bill had a slightly different partisan and sectional make-up depending on the issue, the ad hoc coalitions were enough to pass each bill.[110] The successful passage of such a controversial package of bills demonstrates Fillmore's considerable ability as a legislative leader, as he played "a major, if not decisive role in passing the compromise," and was able to successfully work across the aisle to pass the measures in a Democratic Congress.[111] As Crockett succinctly put it: "A Whig administration had backed a Democratic compromise and won."[112] Of course, to do this, Fillmore had to reject the Whig view of the presidency that he had defended for nearly 20 years and leverage the power of his office in a manner he had previously deplored.

With the Compromise passed, the rest of Fillmore's administration was largely concerned with enforcing it. In practice, this meant a vigorous enforcement of the new Fugitive Slave Act, which had been a key part of getting the South to agree to the Compromise. While vigorous enforcement of a congressionally passed law is perfectly consistent with the Whig conception of the presidency, Fillmore's rigorous enforcement of the Fugitive Slave Act contributed to sectional divisions, as Northerners decried the law and Fillmore's execution of it—with one Northern Whig crying "God save us from Whig Vice Presidents"[113]—while Southerners enthusiastically supported it and the president. The end result was disastrous for Fillmore and the Whig Party. Fillmore failed to be elected to the presidency in his own right, being defeated in the Whig Convention of 1852 by Winfield Scott, a general in the mold of Harrison and Taylor. Unlike Harrison and Taylor, however, Scott suffered the worst defeat of any Whig presidential

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[102]Robert J. Rayback, *Millard Fillmore: Biography of a President* (Buffalo, NY: Henry Stewart, 1959), 132.

[103]Millard Fillmore to a Friend, n.d., in *Millard Fillmore Papers* (Buffalo, NY: Buffalo Historical Society, 1907), 2:285–86.

[104]Calabresi and Yoo, *Unitary Executive*, 148.

[105]Ibid., 148–51.

[106]Holt, *Whig Party*, 545–46.

[107]Gerhardt, *Forgotten*, 89.

[108]Rayback, *Millard Fillmore*, 237; Jordan T. Cash, "Constitutional Agency of the Vice Presidency," *Congress & the Presidency* 49, no. 3 (2022): 339–43.

[109]David M. Potter, *The Impending Crisis, 1848-1861*, ed. Don E. Fehrenbacher (New York: Harper & Row, 1976), 110; Holman Hamilton, *Prologue to Conflict: The Crisis and Compromise of 1850* (Lexington: University of Kentucky Press, 1964), 102–17, 133–50; Rayback, 238–53. Smith, *Taylor & Fillmore*, 129–70.

[110]Holt, *The American Whig Party*, 542; Crockett, *The Opposition Presidency*, 72. Smith, *Taylor & Fillmore*, 171–94.

[111]Philip Abbott, *Bad Presidents: Failure in the White House* (New York: Palgrave Macmillan, 2013), 56.

[112]Crockett, *Opposition Presidency*, 72.

[113]Benjamin Wade qtd. In Holt, *Whig Party*, 572.

candidate, winning only four states and a measly 42 electoral votes against Democrat Franklin Pierce.[114] By 1856, the Whig Party was effectively defunct.

3. Conclusion and analysis

The four Whig presidents—Harrison, Tyler, Taylor, and Fillmore—governed collectively for only 8 years, yet they form a unique chapter in American history. They were the last presidents to not be members of either the Republican or Democratic parties; two were the first presidents to die in office, while the other two were the first to become president without having been elected to the office. All entered the presidency with a clear, professed, principled, and partisan commitment to weakening the office they held. The idea of a weak executive is not foreign to the American political tradition, nor were the interpretations of constitutional executive power offered by Clay and Webster completely unreasonable. To a certain degree, we should even expect members of Congress to try and limit executive power by proposing their own interpretations of presidential authority. At the same time, however, we should not expect presidents to reflexively follow those interpretations.

In a system where each branch is expected to seek to expand its powers so that "ambition may counteract ambition,"[115] attempting to restrain presidential power by relying on presidents to restrain themselves is unsustainable and misunderstands the structural incentives built into the office by the Constitution. As Jeffrey Tulis argues, "if one has serious problems with executive overreaching, one should direct the complaint to Congress because, in a sense, the system is designed to incline each institution to overreach."[116]

If we look to how the men who wrote, ratified, and operationalized the Constitution anticipated that presidents would behave, it becomes even clearer that the Whig presidents came to embrace an older, Federalist view of their office. The Framers, both in the Constitutional Convention and the ratification debates, argued that a strong independent executive was necessary for the constitutional system to function properly, as well as for good government generally. As summarized by Hamilton in "Federalist 70," "Energy in the executive is a leading character in the definition of good government,"[117] and the Constitution empowers the president to be able to bring out this energy. In setting up the president to be a single executive selected by the Electoral College with powers such as the veto to preserve its independence, the Founders clearly rejected legislative supremacy, creating an executive that was meant to operate as a distinct branch of government with its own authority and functions. Additionally, the Framers expected that individuals who would seek and ascend to the level of the presidency would be ambitious and possess a certain "love of fame." Such individuals would not be content to merely carry out the will of others. Hence the Constitution structures institutions so that the individuals within them will direct their ambition toward the public good, "mak[ing] their interest coincide with their duty."[118]

When we consider these functions together, it is clear that the presidency created by the Constitution is fundamentally at odds with the vision of the executive promulgated by the Whigs.

When the Whig presidents entered office, they were reoriented by the office's constitutional structure, duties, and powers, which together form a constitutional logic that was far stronger and more durable than their personal and partisan principles. As a result, they acted in ways that plainly contradicted their party's conception of the office. Administratively, each Whig president embraced political responsibility and used his removal and appointment powers to construct an executive branch that aligned with his constitutional, political, and policy vision. Implicit in those actions was an interpretation of the removal power directly counter to that insisted on by Clay and Webster, but in line with the view put forth by Madison and Jackson that the president constitutionally possesses a unilateral removal power independent of Congress. Similarly, none of the Whig presidents treated their cabinet members as equals. Even Harrison's attempt to operate using a cabinet government model collapsed as soon as he and his cabinet disagreed, at which point Harrison defaulted to his office's constitutional superiority and got his way.

Legislatively, none of the presidents limited themselves from participation in the legislative process. Taylor and Fillmore in particular were intimately involved in the negotiations surrounding the Compromise of 1850. Even the veto, so dreaded and denounced by the Whigs, was a powerful tool in the hands of a Whig president. While this is most evident with Tyler vetoing legislation at a greater rate than any president before him and single-handedly killing the Whig economic agenda, even Harrison and Taylor noted in major addresses that the veto might have broader applications beyond the confines of Whig Party doctrine. Similarly, Taylor appeared ready to veto the Compromise of 1850 when it went in a direction he did not like.

In rejecting the Whig view of the executive, the Whig presidents illustrate how the constitutional logic of the presidency can affect the personal perspectives and behavior of the individuals holding it, as well as demonstrate how the Constitution creates a powerful presidency able to resist the outside imposition of legislative supremacy.

That the Whig presidents were oriented and positively acted to reject the Whig view of the executive is all the more significant given the circumstances of their administrations. As the presidents were elected on a platform of curtailing executive power, entered office with a weak view of the presidency, and were confronted by relatively strong and aggressive Congresses, the ideological and political incentives favored the presidents continuing to embrace their party's understanding of a deferential executive, thereby avoiding any major conflicts with Congress or charges of partisan apostasy. By eschewing the Whig view of the presidency and asserting their constitutional authority, the Whig presidents upheld the constitutional independence and strength of the executive, resisting the powerful political inducements from Congress and their own party to simply defer to other institutions. These presidents had agency and could have rejected or resisted the structural orientation of their office and gone along with their ideological preferences and the political pressures of the moment. But

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[114]Holt, *Whig Party*, 752–60.

[115]Madison, "Federalist 51," 281.

[116]Jeffrey Tulis, "Impeachment in the Constitutional Order," in *The Constitutional Presidency*, ed. Joseph M. Bessette and Jeffrey K. Tulis (Baltimore: John Hopkins University Press, 2009), 242–43.

[117]Hamilton, "Federalist 70," 374, 377.

[118]Hamilton, "Federalist 72," 387. For a broader discussion on fame in the context of American institutions, particularly in the Founding, see Douglass Adair, "Fame and the Founding Fathers," in *Fame and the Founding Fathers: Essays by Douglass Adair*, ed. Trevor

Colbourn (New York: Norton, 1974), 3–27; Michael Zuckert, "The American Founders and the Fundamentals of Governance," in *"From Reflection and Choice": The Political Philosophy of the Federalist Papers and the Ratification Debate*, ed. Will R. Jordan (Macon, GA: Mercer University Press, 2020), 22–23; Ceaser, *Designing a Polity*, 57–61.

they did not. Rather, we find the opposite occurred as they willingly embraced the structural characteristics of their office and deployed its powers despite their stated opposition to the exercise of those very powers, suggesting that the Whig presidents found the constitutional incentives of their office to be stronger and more compelling than the political incentives surrounding them and responded to those incentives accordingly. Such results illustrate how the presidency's constitutional logic continues to be influential and operate independently of broader political, institutional, and partisan contexts.

Additionally, the Whig presidents' consistent defense of their office and assertion of their authority is particularly important when considering the wider trajectory and institutional development of the presidency. Had the Whig presidents acted as we would expect given their partisan ideology and adhered to the Whig view of a tightly constrained presidency, they would have provided a rival understanding of how the executive is to function relative to the other branches. In doing so, they could have set the presidency on a completely different developmental track and created a model of how legislative supremacy may emerge even from a constitutional system of separation of powers and checks and balances.

The potential for such a major change is particularly evident with Harrison and Tyler, as they governed alongside substantial Whig majorities in both houses of Congress. Had they gone along with their congressional co-partisans they could have overseen a major reconstructive moment in American politics, dispensing with the dominant Jacksonian regime and instituting a new "Whig Regime" where Congress is indisputably acknowledged as the preeminent, if not supreme, branch of government. From the perspective of the scholarship on political time, the fact that such a reconstruction failed to materialize points to the combined Harrison–Tyler administration as another example of how presidents "can fail to complete the reconstructive tasks."[119] Such an assessment, however, misses the fact that what Gerard Magliocca refers to as the "the Whig False Positive"[120] was due to the presidents' rejection of the Whig presidency, which in turn was driven by their adherence to the constitutional logic of the office.

Beyond highlighting the different developmental tracks the Whig presidents might have set the presidency on, it is notable that in acting according to the constitutional logic of the office they resembled their Jacksonian rivals more than their Whigs allies. Such an outcome has important ramifications for understanding the relationship of the Whigs and Jacksonians to constitutional executive power. For the Whigs, it means that the vision of the executive they attempted to impose onto the institution was clearly out of step with the constitutional presidency, conflicting with the office's constitutional logic to the extent that their own presidents would have had to act in ways that were constitutionally illogical to fully carry it out. For the Jacksonians, it indicates that their conception of executive power, while not synonymous with the Federalist understanding,[121] was nonetheless closer to that of the Framers and more consonant with the presidency's constitutional logic.

Operating according to the office's constitutional logic, the Whig presidents bolstered the presidency's authority against alternative constitutional conceptions and serious political attacks that threatened to upend the constitutional order of separation of powers. In doing so, they preserved the presidency's fundamental and essential role as a powerful executive while simultaneously entrenching the institutional path set by the Federalists and continued by the Jacksonians, thereby maintaining the office's developmental trajectory which they had previously railed against and which their party had fought so hard to dislodge.

The Whig presidents' impact on the institutional development of the presidency becomes even more remarkable when we consider the fact that they largely discredited the Whig theory of the presidency through their rejection of it. While later presidents would pledge to be deferential to Congress, none ever fully adopted or implemented the legislative supremacist views of the Whigs. Looking at the later Republican presidents who were former Whigs—Abraham Lincoln, Ulysses S. Grant, Rutherford B. Hayes, Chester A. Arthur, and Benjamin Harrison (grandson of William Henry)[122]—we see that even they did not subscribe to the Whig conception of the presidency. When it came to legislative leadership, each of these presidents—including Lincoln, who had served as a Whig congressman from 1847 to 1849—used the veto more than most of their predecessors, including for policy purposes.[123] They also engaged directly in the legislative process. Famously, Arthur—a product of the spoils system—proved to be instrumental in the passage of the landmark Pendleton Act, the first major effort at civil service reform.[124] Similarly, Harrison proposed and successfully pushed for the passage of several major pieces of legislation, most notably the Sherman Anti-Trust Act of 1890 and the Circuit Court of Appeals Act of 1891.[125] Thus, far from adopting the Whigs' view of presidents abstaining from legislative activity, these presidents delved into legislative debates and used the veto on a scale unheard of by their predecessors.

These former Whigs also strongly defended their constitutional authority over the administration. In his first annual message to Congress, Grant "earnestly recommend[ed]" that Congress repeal the Tenure of Office Act which required presidents to have senatorial consent before removing executive branch officials. In making

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from the people through popular election. For the Federalists it was a more complex question, as some, like Hamilton, "generally contended that the Constitution is sufficient for the exercise of executive power" and denied the need for the president to have an electoral mandate, while others, such as James Wilson and Gouverneur Morris believed the president should be grounded in popular opinion, but did not seem to go so far as to make it an extraconstitutional source of power. See Cash, *Isolated Presidency*, 21; Bailey, *Idea*, 34; Ceaser, *Presidential Selection*, 83; David K. Nichols, "Gouverneur Morris and the Creation of American Constitutionalism," in *Natural Right and Political Philosophy: Essays in Honor of Catherine Zuckert and Michael Zuckert*, ed. Ann Ward and Lee Ward (Notre Dame: University of Notre Dame Press, 2013), 267. That the Whig presidents seemed to embrace the Jeffersonian-Jacksonian understanding of the president's role as a national representative and popular opinion as a source of authority is an indication of how presidents may fill in ambiguities in the office's constitutional logic over time, and that presidents tend to resolve those ambiguities in similar ways. For more on president's resolving ambiguities in the office's constitutional logic see Cash, *Isolated Presidency*, 161–64.

[122]Grant was not formally a member of the Whig Party but stated he had been "a Whig by education and a great admirer of Mr. Clay" and that "most of my neighbors had known me as an officer of the army with Whig proclivities." See Ulysses S. Grant, *Personal Memoirs of U.S. Grant and Selected Letters, 1839-1865*, ed. Mary D. Feely and William S. Freely (New York: The Library of America, 1990), 142.

[123]"Presidential Vetoes: Washington-Biden," *American Presidency Project* https://www.presidency.ucsb.edu/statistics/data/presidential-vetoes.

[124]Justus D. Doenecke, *The Presidencies of James A. Garfield & Chester A. Arthur* (Lawrence: Regents Press of Kansas, 1981), 96–103.

[125]Gerhardt, *Forgotten*, 146–48.

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[119]Curt Nichols and Adam S. Myers, "Exploiting the Opportunity for Reconstructive Leadership: Presidential Responses to Enervated Political Regimes," *American Politics Research* 38, no. 5 (2010): 822.

[120]Gerard N. Magliocca, *Andrew Jackson and the Constitution: The Rise and Fall of Generational Regimes* (Lawrence: University Press of Kansas, 2007), 74.

[121]For a major example of the differences between Federalist and Jacksonian views on executive power, see the debates over whether the president served as a representative of the nation as a whole and drew energy from popular election. For the Jacksonians—who in this regard were influenced by the Jeffersonians—the president drew energy directly

his case, Grant insisted that the law was "inconsistent with a faithful and efficient administration of the Government" and "could not have been the intention of the framers of the Constitution."[126] Similarly, the presidents pushed back against efforts by the Senate to control appointments. This was particularly evident during the Hayes administration as the Republican-controlled Senate refused to confirm Hayes' cabinet appointments, yet when Hayes stood firm he gained public support and the senators relented, giving the president the cabinet he desired.[127] In short, the Whig presidents' rejection of the Whig conception of the presidency contributed to that view not being seriously adopted by later presidents, even those former Whigs who might have been inclined to do so for ideological or partisan reasons.

A healthy suspicion of executive power is a hallmark of American political thought and practice. That suspicion is not, however, expressed in the Constitution. The constitutional presidency is one of substantial authority and is constructed to be a powerful and independent branch of government. In attempting to create a system of legislative supremacy, the Whigs were attempting to fundamentally reshape the constitutional system of separation of powers and checks and balances, and in doing so found themselves pushing against the basic constitutional foundations of government itself. In seeking to enact that system by electing Whigs to the presidency and expecting them not to use the constitutional powers at their disposal, the Whigs fundamentally misunderstood, or at the very least underestimated, the structural incentives built into the office by the Constitution itself. That the Whigs attempted to amend the Constitution to limit executive authority on several occasions and spoke of constitutional "defects" and "errors" suggests that even they came to understand that their notion of executive power was inconsistent and incompatible with the Constitution. This lesson was surely hammered home by the fact that none of the Whig presidents ever lived up to their promises of executive deference.

The Whig presidents acted exactly how we would expect given Madison's statement that the constitutional system only works when "the interest of the man" becomes "connected with the constitutional rights of the place."[128] The Whig presidents entered office promising to limit their own power, but quickly identified with their new office and embraced its authority to pursue their policy goals. It is a clear illustration of how the Constitution can change the institutional perspective of an officeholder depending on where they sit in the constitutional system. Because the Whigs adopted a view of presidential power that was fundamentally out of step with the Constitution, once in office, Harrison, Tyler, Taylor, and Fillmore were faced with the choice of whether to act like Whigs or to act like presidents. Surrounded by the structural incentives and authority the Constitution grants to the executive, each one of them chose to act like a president.

Competing interests. The author declares none.

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[126]Ulysses S. Grant, "First Annual Message," December 6, 1869, *American Presidency Project* https://www.presidency.ucsb.edu/documents/first-annual-message-11; Alvis, Bailey, and Taylor, *Contested Removal Power*, 106–07.

[127]Frank P. Vazzano, "Rutherford B. Hayes and the Politics of Discord," *The Historian* 68, no. 3 (Fall 2006): 522–29.

[128]Madison, "Federalist 51," 281.