

SENATORIAL REJECTIONS OF PRESIDENTIAL NOMINATIONS TO THE CABINET: A STUDY IN CONSTITUTIONAL CUSTOM

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INTRODUCTION

On June 19, 1959, *The Washington Post and Times Herald*¹ headlined the Senate's rejection of Lewis L. Strauss for Secretary of Commerce by a vote of 49 to 46. We are interested in the present rejection² only as a part of the larger question: when, if ever, should the Senate reject Presidential nominations to the Cabinet. In order to arrive at any conclusions in this matter, we shall review the several rejections up to Strauss. A few interesting observations on the origin and growth of the Cabinet³ as a constitutional custom may first be in order.

THE CABINET

The "Founding Fathers" did not create a Cabinet⁴ for the Chief Magistrate — the President. The Constitution speaks of heads of de-

* See Contributors' Section, p. 263, for biographical data.

¹ The Washington Post and Times Herald, June 19, 1959, §A, p. 1.

² Lewis L. Strauss was rejected for the Cabinet position of Secretary of Commerce. *Ibid.* The writer is of the opinion that we are too close in point of time to the present rejection to be able to write objectively of the matter. Also, additional facts may possibly appear later that will give more facts as to the reasons for the rejection. Several interesting comments have been made by newspaper contributors as to the possible reasons why Strauss was rejected. See, Walter Lippmann, *The Strauss Affair*, The Washington Post and Times Herald, June 23, 1959, §A, p. 15; and David Lawrence, *Sad Chapter in the Senate*, The Evening Star, June 19, 1959, §A, p. 19.

³ See for comments the following: CORWIN, THE PRESIDENT OFFICE AND POWERS: HISTORY AND ANALYSIS OF PRACTICE AND OPINION 80, 81, 301, 302, 304, 305, 320, 322, 446 (1941); 1 HOCKETT, THE CONSTITUTIONAL HISTORY OF THE UNITED STATES 1776-1826, 244 (1939); WILSON, CONGRESSIONAL GOVERNMENT 257 (1913); 1 BRYCE, THE AMERICAN COMMONWEALTH 86-96 (1895); 2 BRYCE, THE AMERICAN COMMONWEALTH 157 (1895); KELLY & HARBISON, THE AMERICAN CONSTITUTION: ITS ORIGINS AND DEVELOPMENT 184, 185 (1948); SWISHER, AMERICAN CONSTITUTIONAL DEVELOPMENT 54, 55, 61-63, 147-148, 275, 378, 561-562 (1948); BEARD, THE ENDURING FEDERALIST 294, 321-28 (1948); HURST, THE GROWTH OF AMERICAN LAW; THE LAW MAKERS 379-81 (1950); MATHEWS, THE AMERICAN CONSTITUTIONAL SYSTEM 88, 131, 155 (1940); NORTON, THE CONSTITUTION OF THE UNITED STATES: ITS SOURCES AND ITS APPLICATION 112, 113 (1940); 2 FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 135, 136, 158, 495, 499, 533, 541-543, 575, 599, 638, 659 (1937); 3 FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787 at 111, 606, 608 (1937); *Muskat v. United States*, 219 U.S. 346 (1911); *In re Neagle*, 135 U.S. 1 (1890).

⁴ *Ibid.*

partments, and of principal officers. From these officers the President may require, in writing,⁵ opinions about any matter pertaining to their departments. The Constitution further gives the Chief Executive the power to nominate and appoint these principal officers by and with the advice and consent of the Senate.⁶ The Senate, therefore, has a check on the President in his appointive power. The "Fathers" feared that unless this responsibility was laid equally upon the Senate and the President that a strong Chief Magistrate might appoint unworthy subordinates, and thereby obtain power contrary to the best interests of the people.⁷

The Cabinet in the United States grew up by a custom, which seems to have begun when President Washington, while making a southern tour of the nation, left instructions for the Vice President and the department heads to consult on routine matters and, if any emergency required his attention, they were to advise him by messenger. Gradually, over a period of time, it became customary for the President to call into conference the several departmental heads. These principal officers became an official family of the President. Loyalty, confidence, dispatch and character were major requirements for the position of department head.

It is well to remember that the Cabinet was born through custom, and that usage generally gives the President the right to choose and appoint whom he desires for his official family. As a rule, the Senate permits the Chief Magistrate's Cabinet nominations to be confirmed with little difficulty, because it has come to look upon the Cabinet as a part of the Executive, intimately connected, as an official family. The Senate retains the right of rejection, even if it is seldom used; and this body (the Senate) is its own judge of the meaning of the word "unfitness" as it applies to any Cabinet nominee.

However, it must not be forgotten that the Senate is co-jointly, with the President, responsible for each Cabinet appointment. The Senate, equally with the Executive, owes a duty to the people to see that worthy men are entrusted with the executive departments. This seems wise because it is to be presumed that the Senate, as well as the Chief Magistrate, acts in the best interest of the people. The power of this body (the Senate) over confirmations can do no harm if it is used wisely, but can, on the other hand, add valuable "sifting" power to appointments. Lastly, there have been comparatively few

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

Senatorial rejections of Cabinet nominations; in fact, since 1789, there have been only eight⁸ (including the Strauss rejection of recent date).

THE TANEY REJECTION

Roger Brooke Taney⁹ assumed the duties of Secretary of the Treasury, through a recess appointment from President Andrew Jackson, on September 24, 1833. William J. Duane, who preceded him in that office, was dismissed by Jackson because he would not consent to remove the federal deposits from the Bank of the United States as desired by the President. Taney, upon his appointment, began to remove the government bank deposits in harmony with Jackson's wishes. The President sent his nomination to the Senate on June 23, 1834, and this body rejected it at once.¹⁰ This was the first Senatorial rejection of a Presidential nomination to the Cabinet.¹¹

⁸ The seven rejections (in addition to the recent Strauss rejection) may be listed as follows:

<i>Nominee</i>	<i>Position</i>	<i>President</i>	<i>and Date</i>	<i>Vote</i>
Roger B. Taney	Sec. Treas.	Jackson	6-23-1834	18 to 28
Caleb Cushing	Sec. Treas.	Tyler	3- 3-1843	19 to 27
Caleb Cushing	Sec. Treas.	Tyler	3- 3-1843	10 to 27
Caleb Cushing	Sec. Treas.	Tyler	3- 3-1843	2 to 29
David Henshaw	Sec. Navy	Tyler	1-15-1844	6 to 34
James M. Porter	Sec. War	Tyler	1-30-1844	3 to 38
James S. Green	Sec. Treas.	Tyler	6-15-1844	not rec.
Henry Stanbery	Atty. General	Johnson	6- 2-1868	11 to 29
Charles B. Warren	Atty. General	Coolidge	3-10-1925	39 to 41
Charles B. Warren	Atty. General	Coolidge	3-16-1925	39 to 46

The above information was obtained from 2 HAYNES, *THE SENATE OF THE UNITED STATES* 761 (1938).

⁹ Taney was educated at Dickinson College, Pennsylvania. He had been born into the "purple" of the landed gentry of Calvert, Maryland. His life was begun much as the other country gentlemen of his period and section. He was a Federalist but lived in the era of dying Federalism. When the War of 1812 was precipitated Taney divorced himself from the old-line Federalists and assisted in leading the fight for National unity, although he contended against the war spirit as long as the country was at peace. He was a lawyer and with the end of the war he devoted himself to active practice. From Frederick, Maryland, where he had practiced, he moved to Baltimore to more easily gain his fortune. From Frederick to Baltimore he left a trail of well-fought brilliant legal battles. Jackson learned, through a friend, that Taney was one of the Federalists who fought for the unity of the nation during the war. Taney gained the reputation for courtliness and culture in a section in which such manners were a matter of everyday life. In his legal work he was painstaking and once he thought a matter through he was a determined antagonist on principle. Like others of a later period, such as Robert E. Lee, duty became a watchword for him. Books, long tramps through the woods, poetry and his deep Catholic religious belief became of second nature to him. He was nervous but vehement in his views and all knew him to be uncompromising on principles. Such a man became the later crusader of the Jackson administration. The National Intelligencer, on October 14, 1834, stated that his unpardonable error seemed to have been his adherence to the Jacksonian creed of government. SWISHER, *ROGER B. TANEY*, 303-304 (1935).

¹⁰ SENATE JOURNAL, 23RD CONG., 1ST SESS. 341.

¹¹ SWISHER, *op. cit. supra* note 9, at 286-287.

Why was Taney rejected? It is necessary to review many of the historical events from the date of Jackson's election up to the time of the rejection in order to determine the reasons for the Senate's adverseness to Taney.

In 1828 Andrew Jackson was elected to the Presidency. He was a friend of the "common man." This election was the dawn of a new era in American politics. Presidents had formerly been elected and policies determined, to some extent, by manipulations among politicians in the Congress. Property had swayed national elections through the restrictive franchise imposed for the protection of property holders. With the coming of manhood suffrage, however, many in the nation feared the vote of a propertyless mass. Indeed, the aristocracy now feared loss of its position as a favored class. The Jackson election signified the rising of the masses and the coming of democracy to the people "en masse."

Many people were shocked by Jackson's election. Officeholders and the wealthy-intellectual classes felt as if they had been affronted. Two-thirds of the newspapers, four-fifths of the ministers and seven-eighths of the banking interests opposed Jackson. He was thought of as the representative of a "rough, illiterate" mob.¹²

In 1816 the Bank of the United States had been chartered for twenty years. Jackson was a hard-money advocate. He feared the control of American currency by the Bank. This "monster" of finance, by virtue of its lending power, held American business within its grasp. It was a private corporation holding vast deposits of federal money, which it used in its operations. The few directors appointed by the government on the Bank's board had very little if any control over its policies. It was headed by a thoroughly unscrupulous individual named Nicholas Biddle. Under his direction, the Bank, not responsible to the people, became a key in the manipulations of the politics of the day. Jackson was determined to eliminate the Bank.

Henry Clay, a prominent national Republican leader, Senator from Kentucky and future Whig leader, hoped to be President in 1832. The Kentuckian embraced the principles of a protective tariff, internal improvements, a rechartered Bank of the United States and a firmly knit centralized government. He and Jackson were natural antagonists. Clay thought he had an opportunity to use the Bank's recharter as a political propaganda issue for his election to the Presidency. He would force Jackson's hand on this issue. At the same time, Daniel Webster, a national Republican Senator from Massachusetts, was on the Bank's payroll through retainer fees for his support

¹² BOWERS, *THE PARTY BATTLES OF THE JACKSON PERIOD* 31-63 (1923).

of its policies. He was a natural ally of Clay in the fight for the recharter of the Bank.

On January 9, 1832, petitions for recharter were presented in both Houses. A committee was now appointed in Congress to investigate the Bank. The majority report of the committee condemned the "monster". In May the fight began in earnest over the Bank's recharter, and shortly afterwards the bill was passed by the Senate and House.¹³

Taney, Attorney General of the United States, opposed the renewal President, listing his views as to why the recharter bill should be vetoed. On July 3rd the bill was received by President Jackson.

Van Buren, just returned from England, heard the President say: "The bank, Mr. Van Buren, is trying to kill me, but I will kill it."¹⁴ Jackson read Taney's memorandum and heard arguments by members of the Cabinet on the recharter bill. The President was not willing to compromise on the Bank bill as some in the Cabinet thought should be done. Amos Kendall, Andrew J. Donelson, and Taney worked on the veto message. The message of the President, dated July 10, 1832, burst like a bombshell upon the nation. The core of it voiced the belief Jackson held in the common man when it stated:

It is to be regretted, that the rich and powerful too often bend the acts of government to their selfish purposes. Distinctions in society will always exist under every just government. Equality of talents, of education, or of wealth cannot be produced by human institutions. In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to these natural and just advantages artificial distinctions . . . to make the rich richer and the potent more powerful, the humble members of society—the farmers, mechanics, and laborers—who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their Government.¹⁵

Jackson's real case against the Bank, as well as Taney's, Benton's and Kendall's, rested on hard-money views. They believed that the paper system caused periodic depressions. Further, the Bank tended to build up an aristocracy, but Jackson and his cohorts could not use their hard-money views because such ideas would injure the administration with the debtor West and the state banks. Jackson argued, in his veto message, that he was opposed to the Bank because it was unconstitutional. Here he followed the strict constructionist views of

¹³ SCHLESINGER, *THE AGE OF JACKSON* 86-87 (1946).

¹⁴ 2 AMERICAN HISTORICAL ASSOCIATION, *ANNUAL REPORT FOR THE YEAR 1918*, MARTIN VAN BUREN, *AUTOBIOGRAPHY* 625 (1918).

¹⁵ 2 RICHARDSON, *COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS*, 1789-1907 at 590 (1908).

Jefferson. He also stated that the Bank represented too much concentration of power in the hands of a private corporation. Daniel Webster, in a survey of events, said that the poor were to be arrayed against the rich, and Jackson was to become the champion of the masses.

The Bank became a definite issue in the campaign of 1832 and in the election that followed. Jackson was supported by the electorate in this test of strength against Henry Clay, the proponent of a re-chartered Bank.

John C. Calhoun, of South Carolina, joined in the battle against Jackson. He had been berated by Jackson over certain criticisms that were said to have come from Calhoun during the Seminole War.¹⁶ Further, Jackson had fought Calhoun and the Nullificationists of South Carolina through his Force Bill when that state threatened nullification of the Tariff of Abominations. Clay had come to the rescue of Calhoun in this struggle, with his compromise tariff bill, and had thus endeared himself, to an extent, to the South Carolinian. Calhoun found himself with Clay and Webster in opposition to Jackson.

An election victory, and popular acclaim following the nullification crisis, made the administration the more determined to reduce the American aristocracy of which the Bank was an important element. What could be done to anticipate the Bank's dissolution in 1836, when its charter would expire? The government deposits could be removed. No aid was to be furnished to the vanquished Bank for recoupment which would enable it to prepare for another battle for recharter. Taney, Kendall, and Blair supported Jackson in his removal plan.

¹⁶ In March, 1831, Calhoun's pamphlet appeared trying to explain the reason for the antagonism between the President and himself. He placed the blame on Van Buren as the chief instigator of this friction. Calhoun seemed to think that it was a method of Van Buren's to destroy the "Logician" and make himself the apparent heir to the Presidency. The pamphlet was entitled, *Correspondence between General Andrew Jackson and John C. Calhoun, President and Vice-President of the United States, on the Subject of the Course of the Latter in the Deliberations of the Cabinet of Mr. Monroe on the Occurrences of the Seminole War*. It appears that Mr. Calhoun had authorized, in conjunction with Mr. Monroe, the movements of General Jackson in the Seminole War in Florida through instructions of such a general nature as to leave General Jackson to use his own initiative. After General Jackson had taken the peninsula of Florida, which he was permitted to do under the general authorization, there arose a contest in the Cabinet of Mr. Monroe as to whether Jackson should be brought to trial for exceeding his authority, or at least an inquiry be made on the matter. It was hinted that Mr. Crawford, who was a member of the Monroe Cabinet, was behind this move to hurt General Jackson. Only after Jackson had become President and Calhoun Vice-President did Jackson learn that Calhoun was the one who had fought him. During all of this time, Calhoun had led Jackson to believe that he was not the one who had fought him, but on the contrary that he had defended him. When Jackson learned the facts, he wrote the true statement of the entire situation in what he called an "Exposition" and terminated further correspondence with Calhoun. Here arose the terrible split in the Jackson Administration between the President and the Vice-President, which led Mr. Calhoun to fight the President and to throw his considerable strength against him. BENTON, *THIRTY YEARS' VIEW* 167-80 (1858).

The Bank was now fully aroused to its danger. What could it do to force Jackson to yield? Biddle decided he would thrust a panic upon the nation by calling in the notes held by the Bank, and by this means bring pressure to bear upon the President to retract. Businesses failed, many were unemployed, and money could not be obtained in the country because of the restriction of currency. Calhoun entered the battle against the administration. Clay spoke about the undermined currency, the recharter veto of the President, the destruction of internal improvements in the nation, and the danger that the tariff would be submerged under a rampant radicalism. Liberty and the Constitution were now visioned as in serious jeopardy by the concentration of power in the hands of one man.

On February 5th Taney's removals were censured by the Senate as unconstitutional. Jackson was charged with acting contrary to the Constitution. By degrees, however, the Bank's president, Nicholas Biddle, recognized the futility of the fight with a President who would not yield. Biddle began to expand credit through the Bank, and by June 1, 1835, the panic was over and the country was saved from chaos.

Roger Brooke Taney had been prominent in the battles of the Jackson administration against the Bank. He had espoused plans that were anathema to the leaders of the Senate. Mr. Taney believed that the interest of the nation required that public moneys should be withdrawn from the Bank of the United States, and when he came into office he gladly carried out the orders of Jackson.¹⁷ From the Charter of the Bank in 1816, it appears that the Secretary of the Treasury had a right to remove the deposits.¹⁸

On June 23, 1834, in the 23rd Congress, Adams noted that: "The Senate this day rejected the nomination of . . . Roger B. Taney as Secretary of the Treasury—twenty-eight to eighteen."¹⁹ The next day Taney retired from office. In the eyes of the nation it was made to appear that Taney was the prime mover in the withdrawals of the deposits. The Bank forces were set in their opinion that Taney must

¹⁷ WISE, SEVEN DECADES OF THE UNION 136 (1881).

¹⁸ "An Act to incorporate the subscribers to the Bank of the United States, approved April 10, 1816" — "And be it further enacted, that the deposits of the money of the United States, in places the said bank and branches thereof may be established shall be made in said bank or branches thereof, unless the Secretary of the Treasury shall at any time otherwise order and direct; in which case the Secretary of the Treasury shall immediately lay before Congress, if in session, and if not, immediately after the commencement of the next session, the reason of such order or direction." Laws, U. S., 14th Congress, 1st Sess., §16, Ch. 44, 28-42.

¹⁹ 9 CHARLES ADAMS, MEMOIRS OF JOHN QUINCY ADAMS 155 (1877).

be punished for his actions against the Bank through the refusal of his confirmation as Secretary of the Treasury. In their desire to serve the Bank, some members of the Senate had cried "Crucify him, crucify him."

"A presentment of what was to happen," wrote Thomas Hart Benton, "induced the President to delay, until near the end of the session, the nomination to the Senate of Mr. Taney for Secretary of the Treasury." He had offended the Bank of the United States too much to expect his confirmation in the present temper of the Senate.²⁰

The newly elected House of Representatives in 1834, in a campaign in which the Bank had been thoroughly discussed, indicated that the people supported Jackson in his program. This impressed neither the Bank nor the Senate. The Upper House, dominated by anti-Jackson men, would be its own master.²¹

Later, after the nominee had been made Chief Justice of the Supreme Court, on the passing in 1835 of Chief Justice Marshall, Clay recanted his previous views of Taney. He went into the Chief Justice's office one day and shook hands with him, saying: ". . . I have witnessed your judicial career, and it is due to myself and due to you that I should say what has been the result; that I am satisfied now that no man in the United States could have been selected, more abundantly able to wear the ermine which Chief Justice Marshall honored."²² Until his last days, Clay continued to hold this final conviction that Taney's life was ". . . a blessing to the country."²³

It seems apparent that Roger Brooke Taney was rejected for the position of Secretary of the Treasury because of the battle between President Jackson and the Senate. His ability to fill the position could not be reasonably questioned. His integrity and honor were never the subject of dispute. He assisted Andrew Jackson against the Clay-Webster-Calhoun alliance in the Senate, for which, politically, he was doomed to suffer rejection of his nomination by the Senate. A Presidential-Senatorial strife, supplemented by dislike for the nominee as a leading Presidential actor, caused Taney's rejection.

REJECTIONS OF CABINET NOMINEES: 1840-1844

On March 2, 1843, President John Tyler nominated Caleb Cush-

²⁰ 1 BENTON, *op. cit. supra* note 16, at 470.

²¹ SAMUEL TYLER, *MEMOIR OF ROGER BROOKE TANEY* 213 (1872).

²² 2 WARREN, *THE SUPREME COURT IN THE UNITED STATES HISTORY* 16 (1937).

²³ *Ibid.*

ing,²⁴ of Massachusetts, to be Secretary of the Treasury.²⁵ The Senate refused to confirm the nominee by a vote of twenty-seven to nineteen.²⁶ Tyler returned the nomination which was a second time rejected by a vote of twenty-seven to ten.²⁷ The President was angered by the Senate's second refusal and immediately returned the nomination. Again Cushing was rejected by a vote, this time twenty-nine to two.

David Henshaw, Democratic boss from Massachusetts,²⁸ oppugnant Whig opponent and friend of Mr. Tyler, was commissioned Secretary of the Navy on July 24, 1843, during a recess of the Senate. He entered upon his duties at once and was nominated by the President on December 6, 1843. He was a gruff, "candid and confident" man, said Arthur J. Schlesinger, Jr., who "aimed straight at his objectives and accomplished them with a minimum of moral scruple. His health was bad, and in later years the gout ruined an already unstable

²⁴ Caleb Cushing was one of the most brilliant men of the nation in his day. The following listing of his activities will give some knowledge of his background: 1825 — Member of the Massachusetts Legislature; 1827 — Member of the Massachusetts Senate; also, 1833 — Member of the Massachusetts Senate; 1835 — Member of the National House of Representatives; 1843 — Commissioner to China; 1845 — Member of the Massachusetts Legislature; also, 1850 — Member of the Massachusetts Legislature; 1852 — Judge of the Supreme Court of Massachusetts; 1853 — Attorney General of the United States; 1866 — Member of the Commission to Codify the Laws of the United States; 1872 — United States Counsel at Geneva Tribunal and 1874 — Minister to Spain.

He had been educated at Harvard College, and he and Mr. Edward Everett were classed as the two greatest linguists ever to be seated in the Congress or in a President's Cabinet. Cushing was able to read and translate all of the languages of Europe and many of those of Asia. He graduated from college at the youthful age of seventeen, and was admitted to the bar in 1822; within a few years he was among the leaders of the Massachusetts Bar. W. H. SMITH, HISTORY OF THE CABINET OF THE UNITED STATES OF AMERICA 338-40 (1925).

²⁵ SENATE JOURNAL, 27TH CONG., 3RD SESS. p. 314.

²⁶ The Senate's votes on Mr. Cushing were yeas 19 — Bates, Buchanan, Calhoun, Choate, Cuthbert, Evans, Fulton, King, McDuffie, McRoberts, Rives, Servier, Sturgeon, Tallmadge, Walker, Wilcox, Williams, Woodbury, and Wright; nays 27 — Allen, Archer, Bagby, Barrow, Bayard, Benton, Berrien, Clayton, Conrad, Crafts, Crittenden, Graham, Henderson, Huntington, Kerr, Linn, Mangum, Merrick, Miller, Morehead, Phelps, Porter, Simmons, Smith (of Indiana), Sprague, Tappan, and White. SMITH, *op. cit. supra* note 24, at 315.

²⁷ The Senate's votes for Mr. Cushing were 10 — Bates, Calhoun, Cuthbert, Fulton, King, McDuffie, Rives, Servier, Sturgeon and Walker; against him 27 — Allen, Archer, Bagby, Barrow, Bayard, Benton, Berrien, Linn, Mangum, Merrick, Miller, Morehead, Porter, Simmons, Smith (of Indiana), Sprague, Tappen, White, and Woodbridge. SENATE JOURNAL, 27TH CONG., 3RD SESS. p. 316.

²⁸ David Henshaw was born in Leicester, Massachusetts, April 2, 1791. He was educated at Leicester Academy. In 1830 he was Collector of the Port of Boston, and Secretary of the Navy by appointment of Mr. Tyler in 1843. At the age of twenty-one he engaged in business for himself. He was a politician of no mean worth and a political writer. He was the Democratic boss of Massachusetts (the Whigs could not forget his strong opposition to them in the Boston area). In 1830 he retired from active business. He served several terms in both houses of the Legislature of his native state. He interested himself in railroad building and was largely instrumental in projecting several lines into Boston. SMITH, *op. cit. supra* note 24, at 406, 408, 420-421.

temper."²⁹ His name was rejected by the Senate on January 15th, although he continued to serve, by Presidential request, in his position until February 19th.³⁰ Mr. Henshaw was refused confirmation by a vote of thirty-four to six.³¹

James M. Porter, Democratic leader from Pennsylvania³² and a friend of Tyler's, was commissioned during the recess of the Senate for Secretary of War. His nomination was sent to the Senate on December 6, 1843, and was later rejected by a vote of thirty-eight to three. Subsequently, James S. Green, of New Jersey,³³ was nominated by the President for Secretary of the Treasury and rejected by the Senate.³⁴

Why were these men rejected? The Tyler administration in 1840 presented a unique situation. In order to comprehend the reasons for the Cabinet rejections in this period we must understand the man, Tyler, and the events leading up to his Presidency. John Tyler was at heart a Democrat even while serving, later on, as a Whig President.³⁵ He had been a Democrat until 1836, although at times he seemed quite independent of party regularity. The Virginian had his own ideals and was never afraid to fight for them.³⁶ In 1836 he broke the last link with the Democratic Party by opposing Senator Benton's expunging resolution in the Senate.³⁷ Tyler had approved Jackson's veto of the United States Bank recharter, but disapproved of Jackson's tendency towards centralization of the national government and his harsh threats

²⁹ SCHLESINGER, *op. cit. supra* note 13, at 147.

³⁰ MOSHER, EXECUTIVE REGISTER OF THE UNITED STATES 1789-1902, at 130-33 (1905).

³¹ 2 HAYNES, THE SENATE OF THE UNITED STATES 761 (1938) (votes not tabulated by name).

³² James Madison Porter was born January 6, 1793, near Norristown, Pennsylvania. He received his early education at home and later attended Norristown Academy. He was preparing to enter college when the college building at Princeton was burned during a student rebellion. Thereafter, he continued his education in his father's library. In 1809 he took up the study of law, and was admitted to the bar in 1813. The year 1818 found him deputy attorney general for Northhampton County. Soon he occupied the first place at the bar. He was president of the board of trustees of Lafayette College from 1826 to 1852 and professor of jurisprudence and political economy from 1837 to 1852. In 1837-38 he was Democratic candidate for presiding officer of the State Constitutional Convention. In 1839 he was appointed presiding judge of the 12th judicial district. In 1843 President Tyler appointed him Secretary of War and in 1849 he was elected to the legislature. In 1863 he was elected president judge of the 22nd judicial district for a ten-year period. He was the first president of the Delaware, Lehigh, Schuylkill and Susquehanna Railroad which had been chartered in 1847. He was also president of the Belvidere Delaware Railroad and of several other corporations in Easton. 8 McMURRY, DICTIONARY OF AMERICAN BIOGRAPHY 94-95.

³³ No further information on this nominee seems available. SMITH, *op. cit. supra* note 24, at 170.

³⁴ MOSHER, *op. cit. supra* note 30; HAYNES, *op. cit. supra* note 31.

³⁵ CHITWOOD, JOHN TYLER 208 (1939).

³⁶ *Id.* at 27-28, 32-34, 102-105, 112-113, 132.

³⁷ This Resolution was to remove a censure of the Senate on ex-President Jackson while he was in the White House.

in the South Carolina nullification crisis. He was a Virginian of the extreme state-rights Jeffersonian school. Tyler and Henry Clay had little in common. Clay espoused his theories of a strong nation firmly knit together under protective tariff, internal improvements and a re-chartered Bank of the United States. Clay was a leader, in essence a practical director, of the National Republican party which later developed into the Whig Party. When the Whigs unfurled the Jefferson banner and announced opposition to the consolidation of power in Washington, Tyler felt that his place in politics had at last been chosen for him; he would join them.³⁸ Because of a political "deal" and the death of President Harrison, Tyler became President.³⁹

No definite measures had been proposed by the Whigs in their campaign of 1840 except denunciation of Executive usurpation and patronage abuses in conjunction with "Log Cabin" and "Hard Cider" propaganda. However, Tyler, when he became President, found an unopened letter, sent by special messenger, from one of the political bosses of the Whig party, addressed to President Harrison. Governor William H. Seward, of New York, in this letter had requested Harrison to begin work immediately on plans for a National Bank, a protective tariff, and the distribution of the proceeds of the public lands to the States. Seward assumed that these three items would be on the Whig program, although not a single one of them had been an issue in the 1840 campaign.

Tyler in a speech on May 9, 1841, addressed to "The People of the United States" called for economy in government, elimination of patronage abuses, opposition to the independent treasury, and support for "any constitutional measure which, originating in Congress, shall have for its object the restoration of a sound circulating medium."⁴⁰

³⁸ FRASER, *DEMOCRACY IN THE MAKING: THE JACKSON TYLER ERA* 120-121 (1938).

³⁹ Even his decision to become a part of the Whig party might not have placed him in the White House if fate had not brought the opportunity. Henry Clay, a Whig leader "par excellence," expected to be the Whig candidate for President in 1840. He wanted the electoral vote of Virginia for the Whigs, and desired the votes of as many Southerners as possible. Who could better weld the Southern anti-Jackson votes into a unit than John Tyler as Vice-Presidential candidate on the Whig Ticket? Clay and the Whig, Henry A. Wise of Virginia, made a political deal, and out of it Tyler emerged as Vice-Presidential candidate of the Whig party. In the meantime, Clay as a possible Presidential candidate was discarded by his party in favor of a "Black-Horse" candidate, Harrison, who was more acceptable because he was a person without positive views. Harrison could more easily fit into the leadership of a party which was composed of many diverse elements. Harrison was elected President with Tyler as Vice President. The death of Harrison completed the play of destiny. However, Tyler did not realize that his views would not fit into the Whig Party, or perhaps he thought the Whigs would accept him with his ideas. He would oppose a renewed Bank of the United States. The Virginian was against high protective tariff, and the assumption of state debts by the Nation. Andrew Jackson said that Tyler would be President in action, as well as in name. 1 POORE, *PERLEY'S REMINISCENCES OF SIXTY YEARS IN THE NATIONAL METROPOLIS* 255 (1886).

⁴⁰ FRASER, *op. cit. supra* note 38, at 162.

What was the meaning of these words? Did they indicate the re-establishment of the Bank of the United States? To anyone following the life and views of the President, this would not be the construction. However, some leaders of the Whigs seemed to be uncertain as to the exact meaning of the President's message. They were to learn that Mr. Tyler was a man of determination who sought to rule as he thought best for the nation; he would not be subjected to any Whig dictator of the Adams-Clay type.⁴¹

The Kentuckian now presented to the Senate his six-point party program. He gave notice to the world that he thought himself, and not Tyler, the head of the Whig administration. He would tolerate no interference from anyone, and demanded: (1) the repeal of the independent treasury act; (2) re-establishment of the National Bank; (3) a revision of the tariff in order that adequate revenue might be provided; (4) a temporary government loan; (5) distribution of the proceeds of the public lands by loans to the states; and, (6) a revised system of banking for the District of Columbia. Henry Clay was in the saddle and he would lead. He planned to crack the whip and Tyler must follow or be an outcast from his party.⁴² Clay's primary aim was the re-establishment of the Bank of the United States.⁴³

Tyler and Clay had been in agreement on the first proposal. The President signed the bill for the repeal of the Independent Treasury Act. Clay now proposed to re-establish the Bank of the United States. Would the states have to assent before branches of the Bank could be established within their boundaries? It was felt that the President would oppose any Bank bill that coerced the states. Most of the Democrats in the Senate would not agree to any form of a re-established Bank. They were afraid a compromise might secure the President's agreement and this was the one thing they did not desire. However, Clay privately boasted that "Tyler dares not resist. I will drive him before me."⁴⁴

The Whigs were determined to pass their Bank bill and re-establish a National Bank. The intrigue deepened. John Minor Botts, a Whig Representative from Virginia, and an admirer of Clay as well as an Old Dominion neighbor of Tyler, went to the White House on July 24th. While talking to Tyler he held in his hand a piece of paper on which was written a crucial amendment. He informed the President that he believed this amendment would settle all the differ-

⁴¹ John Quincy Adams, ex-President, was one of the leaders of the Whigs in the House at this time.

⁴² CHITWOOD, *op. cit. supra* note 35, at 213; FRASER, *op. cit. supra* note 38, at 171.

⁴³ FRASER, *op. cit. supra* note 38, at 170.

⁴⁴ *Id.* at 174-175.

ences that might exist on the Bank bill. The amendment would have authorized branches of the Bank in any state whose legislature, at the following session, did not expressly dissent. It provided that in those states in which the legislature did expressly dissent, Congress might authorize branch banks wherever the interest of the public might seem to require them.

The President had little faith in Botts. He told him that he could not approve the amendment and would veto any bill containing it. Botts kept the amendment and on July 27, 1841, Clay arose in the Senate with the identical amendment, now in the handwriting of the Secretary of the Treasury, Mr. Ewing, and stated that it would settle all the difficulties on the National Bank question. The amendment was carried; Clay was elated. Soon afterwards the Bank bill passed the Senate and the House.

On August 16, the President vetoed the bill, because he viewed it as a return of the former Bank of the United States, and this he would not sanction. Tyler told Congress that he had always held such a Bank to be unconstitutional. He said that when he was elected Vice President the public had full knowledge of his views on the Bank and that it had not been an issue in the campaign, nor in the state elections which had been held during the process of work on the bill. He thought that the proposed corporation was essentially an institution of local loans; this was a feature he must oppose. The President thought the states should be permitted to accept or reject Bank branches within their boundaries. The bill did not grant such rights to the states.

The Whig leaders were aggravated with the President because of his veto. Clay said little, as another bill was coming up, and he wanted to wait a while longer before he had an open rupture with Tyler. He was still unprepared for a war with the Chief Magistrate.

Representative Alexander H. H. Stuart, Whig from Virginia, was approached by James A. Pearce, Whig from Maryland, on August 16, 1841. He was asked to see the President at once on a proposed amendment to the vetoed Bank bill. This new amendment, or suggested revision, it was said, would appease the President and a new bill could be drafted accordingly. It was stated that the President's objection to the vetoed bill was that it provided for agencies dealing in local loans. It was felt that Tyler might agree to branch Banks in the states, even without the consent of the states, if such branches were not permitted to deal in local loans. Such an amendment had been drafted and Stuart was to take it to the President.

Stuart carried the revision to Tyler on the 16th, but the President thought the capital of the proposed Bank was too large, and said fifteen million dollars would be sufficient. He agreed that if

public exigencies required, Congress should have the right to increase the capital. Tyler also insisted that no branches should be established in any state if the laws of the state were against it. Stuart was requested by Tyler to take the bill, as agreed upon, to Webster for the final drafting of it. Webster was not at home when Stuart called upon him, so he proceeded to leave his card and went directly to the Whig caucus, where he told the members of the group what he had done. They were well pleased and accepted Stuart's presumed compromise. Further negotiations were to be made with the President. Thus, Tyler would be committed to a new Bank bill. Speed was to be the essence of the timing. With the President committed to a Bank of some kind, there would be additional facts upon which to base a public denunciation of him if he vetoed the bill when it was passed the second time by the Congress. Clay prepared to indict Tyler for treachery to the party, if he should veto the proposed bill. If the Cabinet could be brought to confirm the compromise of the President, the time would have arrived to accuse him of deception. Stuart seemed to be innocent during the entire affair. He apparently did not know of the Whig trickery behind the suggested plan, nor could he foresee that within ten days the Whigs would abandon the assumed compromise; that the President's own marginal amendment written on the intended bill would be ignored and that his objections to any form of local loans would be side-tracked. Even the Chief Magistrate's request to see a copy of the proposed bill before it was submitted to Congress was to be denied.

After the caucus of the Whigs, and at midnight on August 16th, a drunken mob descended on the White House. It gathered at Tenth Street and Pennsylvania Avenue and was determined to vent its anger on Tyler. The President was without defense except for a few weapons saved from the War of 1812, which were hanging on the walls of the White House. Hastily he armed all of the occupants of the mansion and prepared to defend the portals of the Presidency. The mob on seeing muzzles protruding from the windows withdrew and on a nearby hill burned the President in effigy. No one seemed to know who instigated the mob.

The newspapers of the nation, on the morning of August 17, 1841, carried flashing headlines "Veto, Veto." The Whigs swore to even the score with the President. *The New York American*, a Whig paper, claimed the President was simply an egoist, seeking to concentrate all power in his hands at the expense of the legislative branch of the government. But the Whigs held a strong majority in both Houses of Congress and they would do their duty as they saw it.

The Democratic press of the nation was overjoyed in its expressions of gratitude to the President. This, too, did not cause Tyler's

"stock" to rise with the Whig leaders. Frank Blair of the *Globe* and Andrew Jackson at the Hermitage were listed as supporters of Tyler; Calhoun had supported the President. Tyler, during this time, was trying to find some common meeting grounds with the Whig leaders.

The following night many high-ranking members of the Democratic Party in Congress came to the White House to thank the President for his veto. This angered the Whigs.

On August 19th Henry Clay was at the zenith of his power; he was magnetic. Clay viewed the Bank bill as the most important piece of legislation of the entire Whig program. He arose in the Senate and started to ridicule the President. He thought the Bank had been the great issue of the 1840 campaign. Clay was incorrect in this assumption, but he was determined to carry his pet measure at whatever cost to truth and veracity. Clay charged that Tyler was organizing a third party. He viewed those who supported the President as "a low, vulgar and profligate cabal." The Whigs were lashing themselves into a fury at Tyler. They alleged that he was committed to a new Bank bill. The basis of this assumption was stated to have been a verbal understanding between Tyler and his Cabinet.

The new Bank bill was reported in the House on August 20th. The difference between the two bills was negligible; the new one passed the House and was followed by Whig criticisms of the President as "that miserable wretch at the other end of the avenue." A few days later the Senate concurred in the decision of the House.

What would the President do? Tyler admitted at a Cabinet meeting that those who dared to support him would be marked men with the Whig leaders in the Congress. On August 29th, at a Cabinet meeting the President discussed his proposed veto of the second Bank bill. Tyler turned, on the eve of the second veto, to Congressman Caleb Cushing who was in constant attendance on the President on September 6th, 7th and 8th, presumably assisting him in the drafting of the veto.

On September 9th the President submitted his second veto. He would not approve of an old-fashioned Bank of the United States, even though it was disguised under the name "fiscal corporation". The Chief Magistrate stated that "the manner in which its stock is to be subscribed and held, the appointment of its directors and their powers and duties, the corporate powers . . . show that it cannot be regarded as other than a Bank of the United States." The President said no private bank should operate on the credit of the Federal Government. The duty of regulating the value of money should not be combined with private gain to anyone through inflation and deflation of the nation's money by loans to corporations and private persons.

The Whigs were enraged. The President had dared once more to defy them. Botts in the House compared the President to a pig and to Benedict Arnold. Clay insisted that the President should be repudiated at once. The Massachusetts delegation in Congress supported Webster's intention to remain in the Cabinet.

On September 11th Ewing, Crittenden, Badger, and Bell, members of Tyler's Cabinet, sent in their resignations. The Whigs in Congress presumed that the President would not be able to form another Cabinet before the adjournment of Congress on the thirteenth. At that time it was believed that the President must nominate and the Senate confirm all nominees filling vacancies that were created while the Congress was in session. No recess appointments could be made, it was surmised, in such a contingency. Therefore, it was hoped that Tyler would be forced to resign. Should this happen, Samuel L. Southard of New Jersey, president pro-tempore of the Senate and a loyal Whig, would occupy the White House.

The President seemed to have anticipated the Whig strategy. A new Cabinet of very prominent men, who had not incurred the hostility of the Whigs on the Bank issue, was confirmed, partly for this reason and partly because the Congressmen were in a hurry to adjourn and go home.

On the night of the adjournment, the Whig members of Congress in caucus read Tyler out of the party. They served notice on him that if he could obstruct them, they would block his administration in the future. This was no idle threat. The President had refused to sign only two measures presented to him at that time, but these two measures were viewed as the major points of the Whig program. The break between the President and his party had come in all of its finality.

The fight continued between Tyler and the Whigs and on January 11, 1843, an unsuccessful attempt was made to impeach the President. This was the first attempt of impeachment of a Chief Magistrate in American history.⁴⁵ Finally, the Whigs came to the conclusion that there was nothing they could do but wait until 1844 and then try to elect Clay as President. In the meantime they would obstruct, molest and hinder the administration in any manner possible. The smoke of one battle had scarcely cleared when another fight was precipitated. Politically, it was unfortunate for anyone to be an intimate of, or even friendly with, the President.

Tyler now tried to secure support from outside his political organization. He attempted to form a party with no success, after which

⁴⁵ *Id.* at 282-86.

he turned to the Democrats and tried to obtain an alliance with them. The Democrats aided him only when it was to their interest; often they stayed on the sidelines and watched the fire of internal discord among their opponents.

Several pertinent reasons seem apparent for the rejections of the Cabinet nominees in the Tyler administration. Caleb Cushing was unsuccessful because the Whig leaders viewed him as a recreant Whig, a deserter of his associates, a turncoat and friend of the President. Formerly he had been a Whig leader in Congress. From a loyal party man, he became an intimate of the President and an aider and abetter in the Chief Magistrate's vetoes of the pet measure of the party, the re-establishment of the Bank of the United States.⁴⁶

David Henshaw was also refused confirmation by the Senate. He had been a pugnacious Democratic boss of Massachusetts with few moral scruples, and disliked by the Whigs. It was hardly conceivable that a Whig-dominated Senate would look favorably on the appointment of a state Democratic boss of the Henshaw type in their administration; unless, as was the case of the later appointment and confirmation of John C. Calhoun as Secretary of State, such a leader had been a member of the Senate. Henshaw was deemed a friend of the President.⁴⁷

James Madison Porter, of Pennsylvania, was a democratic leader and a friend of Tyler. Much of what has been said in regard to Mr. Henshaw may be stated as the reason for the Senatorial rejection of Mr. Porter,⁴⁸ and Mr. Green of New Jersey.⁴⁹

In conclusion, it may be stated, with little fear of contradiction, that Presidential-Senatorial oppugnation, supplemented by dislike of the nominees caused the refusal of four of Tyler's candidates for Cabinet positions.⁵⁰

⁴⁶ SCHLESINGER, *op. cit. supra* note 13, at 245-246, 394-434; 4 SCHOULER, HISTORY OF THE UNITED STATES OF AMERICA UNDER THE CONSTITUTION 432-433, 439, 454 (1889); 2 SARGENT, PUBLIC MEN AND EVENTS 174 (1875); RRASER, *op. cit. supra* note 38, at 282; NEVINS, THE DIARY OF PHILIP HONE 552 (1936); WISE, SEVEN DECADES OF THE UNION 177 (1881); NILES NATIONAL REGISTER, Vol. LXIV, 307; *Id.* at Vol. LXV, 353.

⁴⁷ SCHLESINGER, *op. cit. supra* note 13, at 245-246, 394-434; SCHOULER, *op. cit. supra* note 46; NILES NATIONAL REGISTER, July 15, 1843, Vol. LXIV, 307; WISE, *op. cit. supra* note 46, at 213; 2 TYLER, THE LETTERS AND TIMES OF THE TYLERS 389, 283-89 (1884-1896).

⁴⁸ BURGESS, THE MIDDLE PERIOD: 1817-1858, at 286-287 (1905); HAYNES, *op. cit. supra* note 31, at 762; WISE, *op. cit. supra* note 17; NILES NATIONAL REGISTER, *op. cit. supra* note 46; CHITWOOD, *op. cit. supra* note 35, at 283-89.

⁴⁹ HAYNES, *op. cit. supra* note 30; WISE, *op. cit. supra* note 46; NILES NATIONAL REGISTER, *op. cit. supra* note 46; CHITWOOD, *op. cit. supra* note 35; 2 BENTON, THIRTY YEARS' VIEW 629 (1858).

⁵⁰ SCHLESINGER, *op. cit. supra* note 13; BEARD, THE RISE OF AMERICAN CIVILIZATION 572-79 (1946); McLAUGHLIN, A CONSTITUTIONAL HISTORY OF THE UNITED STATES 498-499 (1935); WISE, *op. cit. supra* note 46; 3 TYLER, THE LETTERS AND TIMES OF THE TYLERS 190 (1884-1896); 2 BENTON, *op. cit. supra* note 49, at 629.

THE STANBERY REJECTION

Henry Stanbery, of Ohio, was nominated as Attorney General of the United States on July 20, 1866, and confirmed and commissioned on July 23rd. His resignation was accepted as of March 11, 1868.⁵¹ The relinquishment of his office was brought about by his over-sensitive nature in regard to the ethics of a situation in which he was serving both as Attorney General and as an attorney in the defense of President Andrew Johnson in the impeachment trial.⁵² After the termination of the trial he was renominated for his old position, but was rejected by the Senate a few days later.⁵³

Why did the Senate refuse to confirm Stanbery? The story goes back to the days of Lincoln and his policies for reconstruction of the Southland, whenever the war should cease. The program of Johnson was, in some respects, similar to that of Lincoln. It would appear that the attempted impeachment of the President was the result of a struggle between the executive and legislative divisions of the government over the plan of reconstruction. Lincoln had friction with Congressional leaders on his theory. If Lincoln, with all of his prestige in the winning of the war, had difficulty with Congress over a policy of what to do with the Southern states, how much more likely was Johnson to have opposition; he was not a Lincoln.⁵⁴

Andrew Johnson, born at Raleigh, North Carolina, on December 29, 1808, was a self-made man. He was of humble though dignified birth, and because of the death of his father he was orphaned when he was five years of age.⁵⁵ Johnson, who started as an apprentice to a tailor, moved ever upward in the world from an unlettered, unschooled, harum-scarum boy, unable to read and write, to Alderman of his adopted town of Greenville, Tennessee. Then he became Tennessee State Senator in 1835, Congressman in 1843, Governor of his state in 1853, and a United States Senator in 1857.⁵⁶ He was a Democrat until 1864, when policy, to swing the Northern Democrats behind the Lincoln ticket, dictated his nomination as Vice President on the Republican ticket. The country knew his ideas on government; he was always a Democrat at heart.

Johnson had certain principles of government for which he was never afraid to fight, and with indomitable courage he sustained as best he could these ideals. He was against government extravagances, protective tariffs, nullification, and secession. Likewise, he advocated the annexation of Texas, supported the war with Mexico, believed in

⁵¹ MOSHER, *op. cit. supra* note 30, at 178.

⁵² 3 DIARY OF GIDEON WELLES 311 (1911); CHADSEY, THE STRUGGLE BETWEEN PRESIDENT JOHNSON AND CONGRESS OVER RECONSTRUCTION 140 (1896).

⁵³ MOSHER, *op. cit. supra* note 30.

⁵⁴ DEWITT, THE IMPEACHMENT AND TRIAL OF ANDREW JOHNSON 1-5 (1903).

⁵⁵ SAVAGE, THE LIFE AND PUBLIC SERVICES OF ANDREW JOHNSON 13 (1866).

⁵⁶ *Id.* at 13-50.

religious freedom, defended Andrew Jackson in his principles of government, fought always for the laboring classes, supported States' Rights, and recognized slavery as an existing institution. He believed that the Union should not interfere with the Negro's status, but in any contest over slavery the will of the nation should be supreme. The states had no right to secede, and when they tried to do so he considered their acts of secession null and void.⁵⁷ He was a man of strong will, self-determination, biased and prejudiced on certain occasions, and as stubborn as a Tennessee mule.⁵⁸

We can well imagine what would happen when Johnson with his ideas, will, and determination should sit in the President's chair, when in the House and Senate there should be an overwhelming majority of members with ideas, in many cases, just the reverse of those held by the President, and determined to subject the South to Republican control.⁵⁹

Thaddeus Stevens, member of the House from Pennsylvania, was the whip in the fight to reduce the South to a conquered province of the national government, subservient to the wishes of the Congress in any and all matters.⁶⁰ Johnson would punish the leaders of the Confederacy and make them sue for pardon for their traitorous acts, but he would not use the same harsh tactics on the great masses of the South, nor would he sanction wholesale confiscation of property in the South for the benefit of the loyal men and the freedmen. He would be lenient and seek to restore, as quickly as possible, the States to their proper place within the Union, which their governments had disrupted for a session.⁶¹

But his views led him to antagonize Congress. He was not a man of tact and discretion. In the campaign of 1866, in what is known as "the swing around the circle," he made speeches indiscreetly referring to Members of Congress who opposed him. Johnson exhibited anger in some of these appeals that caused him to lose prestige as Chief Magistrate of the nation. The President branded the leaders of the Republican Party as opposed to and seeking to destroy the fundamental principles of government. He listed Stevens, Sumner and Wendell Phillips as leaders in this movement. Johnson even characterized these leaders of the Republican Party as proponents of a new rebellion and, in an analogy with Jefferson Davis, trying to ruin the Union. He again antagonized the Republican Congress

⁵⁷ *Id.* at 13-262.

⁵⁸ *Id.* at 342; CHADSEY, *op. cit. supra* note 52, at 8-10, 128.

⁵⁹ CHADSEY, *op. cit. supra* note 52, at 8, 10, 12, 17-27, 29-34, 49, 51-58; *Congressional Globe*, 39TH CONG., 1ST SESS. 147, 150, 155, 1169, 2256; DUNNING, *ESSAYS ON THE CIVIL WAR AND RECONSTRUCTION AND RELATED TOPICS* 99 (1898).

⁶⁰ CHADSEY, *op. cit. supra* note 52, at 24-27; 3 *DIARY OF GIDEON WELLES*, *op. cit. supra* note 52, at 314; DUNNING, *op. cit. supra* note 59, at 107-108.

⁶¹ CHADSEY, *op. cit. supra* note 52, at 1-60.

by his opposition to the Fourteenth Amendment.⁶² Because of the disagreement with him on this Amendment, disaffection arose in his Cabinet. In 1866, William Dennison, Postmaster General, resigned on July 11th, James Speed, Attorney General on July 18th, and a few days later James Harlan, Secretary of the Interior. His numerous vetoes of bills, such as the Freedmen's Bureau Bill⁶³ and the Civil Rights Bill⁶⁴ antagonized an already wrought-up Congress which was edging further and further toward the views of the radicals of the Steven's type. The mid-term elections gave an overwhelming majority to Johnson's opponents in Congress. On February 7th, he addressed a delegation of colored representatives, from fifteen states and the District of Columbia, in which he held that emancipation was only an incident to the war to preserve the Union and that the war had not been waged to suppress slavery. In this speech he injured himself not only with Congress but with the humanitarians of the North. He said that the States must decide for themselves on the question of franchise. In his veto message to the Civil Rights Bill he doubted whether the Negro had the qualifications for citizenship.⁶⁵ He became in essence a man without a party. To add to the other grievances against him he used federal patronage as a means of opposition to those who fought him.⁶⁶

Chadsey states that:

We can thus easily distinguish three causes which, working together upon a strongly Republican Congress, resulted in the attempted removal of the President. First, the antagonisms arising from different fundamental political ideas, the strained conditions of the times, and the woeful tactlessness of Johnson; second, the almost morbid yet natural fears of the Republican party regarding the sometime seceded States; third, the anger aroused by the use of federal patronage to further the interests of the President.⁶⁷

The attempt to impeach Johnson degenerated into a personal warfare. Several attempts to impeach without definite legal charges had failed. Could those who desired impeachment succeed by legislative limitation of the powers of the President?⁶⁸ They planned to try it.

The attack upon the civil powers of the Chief Magistrate was made through the Tenure-of-Office Act. It was stated that the Senate must advise and consent to removals of those civil officials on

⁶² *Id.* at 68, 84-86, 95-99.

⁶³ *Id.* at 65, 87-88.

⁶⁴ *Id.* at 71; *Congressional Globe*, 39TH CONG., 1ST SESS. 1679-81.

⁶⁵ CHADSEY, *op. cit.* *supra* note 52, at 65-66, 71; *Congressional Globe*, 39TH CONG., 1ST SESS. 1679-81.

⁶⁶ CHADSEY, *op. cit.* *supra* note 52, at 68, 128.

⁶⁷ *Id.* at 128.

⁶⁸ *Id.* at 130-33.

which they concurred in the appointment. If the President failed to honor this law he would be subject to impeachment, by the wording of the act, for "high crimes and misdemeanors in office". The President promptly vetoed the bill and it was just as promptly passed over his veto.⁶⁹

Secretary of War Stanton favored the Congressional view of Reconstruction and opposed the President. He had become obnoxious to the Chief Magistrate. On August 12, 1867, the President suspended Stanton and appointed Grant as Secretary of War *ad interim*. The Senate refused to concur in this matter. Grant walked out on the President. On February 21, 1868, Johnson wrote to Stanton removing him from office. This was a match to the fuse and now the Congress thought it had the necessary material on which to base an impeachment. Finally the resolution formally impeaching the President of "high crimes and misdemeanors in office" was passed by the House of Representatives. In March the articles of impeachment were presented to the Senate and the trial began.⁷⁰

From the beginning of the trial it was clearly seen that the case would be determined mainly on political grounds. The prosecution was practically brought to a close on May 16, 1868, by a vote taken in the Senate of the Eleventh Article of impeachment. Seven Republicans and twelve Democrats voted for acquittal. Thirty-five Republicans voted guilty; Johnson's opponents lacked one vote for a conviction, which required a two-thirds majority. By May 26th the impeachment had failed entirely and the trial was closed.

On the conclusion of the trial the President renominated Stanbery for his old position as Attorney General of the United States. Would the Senate approve the nomination of a man who had figured so prominently in the acquittal of Johnson? It was not likely that Stanbery would be confirmed.

No one could criticise the nominee's ability, honesty of purpose or moral fiber, as his character was above reproach. Certain conclusions can now be arrived at in the Stanbery case. First, one must not forget the Congressional-Presidential feud over Reconstruction. Many of the members of Congress literally hated the Chief Magistrate, and Johnson disliked many members of the Congress. Second, one must remember the important part that Stanbery had played as counsel for the impeached President. He was a king pin at the trial in which Johnson was victorious. It was not probable that the Congress could soon forget this drama.

⁶⁹ *Id.* at 134-36.

⁷⁰ *Id.* at 136-39.

Gideon Welles, writing in his *Diary* under the date of June 3, 1868, states that "The Senate in its spite, has rejected the nomination of Mr. Stanbery as Attorney-General. There is in this rejection a factious and partisan exhibition by Senators which all good men must regret to witness."⁷¹

Robert W. Winston, in his admirable work, *Andrew Johnson*, states that Stanbery was ". . . ungraciously rejected by the Senate."⁷² Lloyd Paul Stryker, in his work *Andrew Johnson*, finds much the same picture in stating that the Senate derived satisfaction in being able to reject Johnson's leading attorney in the impeachment trial when he was renominated for his old position.⁷³

It is, indeed, a sad commentary on public affairs in the nation, as George Fort Milton states in *The Age of Hate*, that ". . . the Senate, still smarting under the defeat of the impeachment trial, pettily rejected him (Stanbery) as a fitting rebuke for his having appeared as counsel for 'the great criminal'."⁷⁴

In conclusion, therefore, it is reasonable to say that the Senatorial-Presidential battle over Reconstruction supplemented by Senatorial dislike for the nominee caused Stanbery's rejection for the position of Attorney General of the United States.

THE WARREN REJECTION

Charles Beecher Warren, of Michigan, was nominated for the position of Attorney General of the United States by President Calvin Coolidge on January 10, 1925.⁷⁵ His name did not come up for a Senatorial confirmation during the term of Congress then in session, because it was admitted by administration leaders that it would delay other necessary legislation that must be passed upon.⁷⁶ On March 5th President Coolidge again submitted the nomination of Mr. Warren;⁷⁷ and he was rejected March 10th by a surprise vote of 39 to 41,⁷⁸

⁷¹ 3 DIARY OF GIDEON WELLES, *op. cit. supra* note 52, at 375.

⁷² WINSTON, ANDREW JOHNSON 454 (1928).

⁷³ STRYKER, ANDREW JOHNSON 735 (1930).

⁷⁴ MILTON, THE AGE OF HATE 634 (1930).

⁷⁵ CONG. REC. Vol. LXVI, Part 2, 68TH CONG., 2ND SESS. 1615; HART, A MONTH'S WORLD HISTORY: EVENTS IN THE UNITED STATES, in 21 CURRENT HISTORY 753 (1925).

⁷⁶ N. Y. Times, March 1, 1925, Vol. LXXIV, No. 24, 508, p. 6.

⁷⁷ CONG. REC. Vol. LXVII, Part 1, 69TH CONG., 10.

⁷⁸ The vote against confirmation included the following: Democrats 30 — Ashurst, Bayard, Blease, Bratton, Broussard, Bruce, Caraway, Copeland, Ferris, Fletcher, George, Harris, Harrison, Heflin, King, McKellar, Mayfield, Neely, Pittman, Ralston, Tansdell, Reed (Mo.), Robinson, Sheppard, Simmons, Swanson, Trammell, Tyson, Walsh, and Wheeler (Senator Overman of North Carolina, who first voted for Warren's confirmation in the tie ballot of 40-40, changed his vote on reconsideration, thus, casting the 31st Democratic vote against the confirmation); Insurgent Republicans 6 — Borah, Johnson (of California), McMaster, Norbeck, Norris and Couzens; Radical Republicans 3 — Brookhart, Frazier, and Ladd; Farmer-Laborite 1 — Ship-

while the Vice President was in a hotel taking a nap.

On March 16th the name of Mr. Warren, again having been presented to the Senate by the President, was rejected by a vote of 39 to 46.⁷⁹ The President stated that he would give Warren a recess appointment, but the nominee would not accede to the wishes of Coolidge.

It would be impossible to get the proper perspective of the Warren struggle for confirmation without a glance at the Harding era, the scandals in his Cabinet, and the growth of certain blocs in Congress.

In the Republican Party of this era there were certain "free lances" or "insurgents" who voted with the Party at elections, but were independent of Party regularity in the interim between elections. In this group could be listed Borah, Couzens, Johnson of California, McMaster, Norbeck, and Norris. Supplementing this group were the Farmer-Laborites, who also voted independently, and the Republican "Radicals," LaFollette, Ladd, Brookhart and Frazier. These "Radicals" were not "regular" in the election of 1924 because they had bolted the party to follow the Third Party leadership of Senator Robert M. LaFollette of Wisconsin. By this action they gained the name "Radical."

During this era the "Insurgents," the "Radicals," and the Farmer-Laborites had frequently added their votes to the Democrats to control the Senate. This alliance worked devastation on the "Old Guard Regulars" and any program opposed by the blocs. In fact, this association controlled Congress by virtue of its votes in the Senate.

Under President Harding, the Senate had approved Fall as Secretary of the Interior, Denby as Secretary of the Navy, and Daugherty as Attorney General. The oil scandals that later descended upon

stead. Those voting for confirmation may be listed as following: Republicans 39 — Bingham, Butler, Cameron, Capper, Cummins, Curtis, Dale, Deneen, Du Pont, Ernst, Fernald, Fess, Gillett, Goff, Gooding, Hale, Harrell, Jones (Wash.), Keys, McKinley, McLean, McNary, Means, Metcalf, Moses, Oddie, Pepper, Pine, Reed (Pa.), Sackett, Schall, Shortridge, Smoot, Spencer, Stanfield, Wadsworth, Watson, Weller, and Willis. *CONG. REC.*, Vol. LXVII, Part 1, 69TH CONG. 101; N. Y. Times, March 11, 1925, Vol. LXXIV, No. 24, 518, p. 1.

⁷⁹ Those voting for confirmation were as follows: Republicans 39 — Bingham, Butler, Cameron, Capper, Cummins, Curtis, Dale, Deneen, Du Pont, Ernst, Fernald, Fess, Gillett, Goff, Gooding, Hale, Harrell, Jones (Wash.), Keys, Lenroot, McKinley, McLean, McNary, Means, Metcalf, Moses, Oddie, Pepper, Pine, Sackett, Schall, Shortridge, Smoot, Spencer, Stanfield, Wadsworth, Watson, Weller, and Willis. Those voting against confirmation were the following: Democrats 35 — Ashurst, Bayard, Blease, Bratton, Broussard, Bruce, Caraway, Copeland, Gill, Edwards, Ferris, Fletcher, George, Gerry, Glass, Harris, Harrison, Heflin, Kendrick, King, McKellar, Mayfield, Neely, Ralston, Ransdell, Reed (Mo.), Robinson, Sheppard, Simmons, Smith, Swanson, Trammell, Tyson, Walsh (Montana), Wheeler; Republican Insurgents 6 — Borah, Couzens, Howell, Johnson (Calif.), Norbeck, and Norris; Radical Republicans 4 — Brookhart, Frazier, Ladd, LaFollette; Farmer-Laborite 1 — Shipstead. *CONG. REC. op. cit. supra* note 78, at 275; N. Y. Times, March 17, 1925, No. 24, 524, p. 1; 21 *CURRENT HISTORY, op. cit. supra* note 75, at 281.

the nation, forced Denby, a Harding holdover in the Coolidge administration, to retire under a cloud, at least of ignorance and carelessness, in the naval oil leases. Later Fall was convicted for bribery in leasing naval oil reserves to E. L. Doheny, Harry F. Sinclair and others. Daugherty was asked to resign because of the smell of scandal that attached to his failure to prosecute what seemed to be excellent cases against his friends of the Cabinet and others connected with the oil frauds against the Government. The Senate could not forget that it had confirmed these men. Should it not be more careful in the future to see that such men did not again obtain public office? President Coolidge also had antagonized the Senate leaders when he was requested to force the resignation of Denby; he told that body that this was a Presidential matter over which the Senate had no control.

Coolidge, as President, was beset by other troubles. The "regular" Republicans thought that it was time to teach the radical "bolters" that it was the best policy to be "regular" in the future. Consequently, LaFollette, Ladd, Brookhart and Frazier, the bolting radicals were read out of the party by demotions on committees. They would have to come back the hard way by service to the party before they would again be taken into the ranks of the "regulars."

With this picture in mind, we now turn to the nomination of Charles Beecher Warren for the position of Attorney General of the United States.

On January 6th, the Michigan delegation in Congress, on learning that Warren was being considered for the position of Attorney General of the United States, determined to protest to President Coolidge.⁸⁰ This delegation in the Congress opposed Warren because they wished to see their thrice elected Governor, Alexander J. Groesbeck, appointed to the position. Warren did not form a part of the Groesbeck organization in the state, and the members of Congress from Michigan did not approve of President Coolidge appointing a man out of step with the Governor's "machine." Besides, some thought it was only courteous for the President to consult the Senators of his party from a nominee's state for their endorsement of him. This custom had been less rigorously applied in Cabinet nominations because the appointment of the official advisors of the President was looked upon as a Presidential right. Nevertheless, such usage was agreeable to the Senate. During the preceding election, Mr. Coolidge had not endeared himself to the members of the Michigan Republican organization when he asked, without their consultation,⁸¹ that Warren be appointed as

⁸⁰ 21 CURRENT HISTORY, *op. cit. supra* note 75.

⁸¹ N. Y. Times, Vol. LXXIV, January 7, 1925, No. 24, 455, "Against Warren Succeeding Stone: Michigan Delegation Hearing He Is to be Attorney General, Will Protest to Coolidge", 3; Shaw, Warren For the Department of Justice, 71, The American Review of Reviews No. 2, 123 (1925).

Chairman of the Committee on Resolutions of the Cleveland National Republican Convention.

Senator Walsh, Democrat of Montana, lead the fight against the confirmation of the nominee. In addressing the Senate he said:

Mr. President, I subscribe to the doctrine that under all ordinary circumstances the nominations of the President of the United States for members of the Cabinet should be confirmed by the Senate without delay and that opposition of a political or factional character ought to be discountnanced. The President is charged by the Constitution to take care that the laws be faithfully executed, and he ought to be given the greatest liberty possible in the selection of those who immediately under him are to carry out his policies in accordance with the laws of Congress. Nevertheless, the founders of our Government, the framers of our Constitution, deemed it unwise to trust unrestrictedly to any one man the appointment of any of the principal officers of the Government, and accordingly provided that in the case of all nominations made by the President of the United States confirmation by the Senate should be necessary except in the case of such inferior officers as Congress might provide should be appointed by the President alone, by the courts, or by the heads of departments. The responsibility, accordingly, for the appointment of all Federal Officers whose confirmation is necessary rests upon this body jointly with the President of the United States. Whether equally or in lesser degree it is unnecessary to canvass. It is indisputable that we share that responsibility and that we must assume it, at least in part.⁸²

Walsh continued that:

All will agree that if a nominee, even for a Cabinet position, is lacking in moral character, he should be rejected by the Senate; but it is contended by some that otherwise his confirmation should follow as a matter of course. I can not think so. A man may have some serious blemishes in that matter of his private character and still be an able administrator and a courageous and patriotic official. Instances of that character will readily occur to any student of history. On the other hand, a man may have led the most exemplary life and yet be totally unfit for the duties and responsibilities of high official position. It is unwise, even if it were possible, accordingly, to attempt to lay down any general rule which ought to govern the Senate in its actions upon nominations for public office.⁸³

Senator Walsh argued that in the case of Mr. Warren there must be a departure from the general rule because of the particular circumstances involved.

The Montana Senator stated that twice within the past few years the office of Attorney General had been filled, as in the case of War-

⁸² See CONG. REC. 69TH CONG., Vol. LXVII, pp. 18-19, 31-32, 74-75, 83-84, 254-58, for arguments in the Warren Case.

⁸³ *Ibid.*

ren, by nominees who were appointed to the position not as a reward for eminent services in the legal profession but as a reward for actual services rendered in politics to the party. He said that in one case, apparently with reference to Attorney General Daugherty, the results had not been favorable. He thought, therefore, that we must judge the future by what had happened in the past.

The Senator from Montana continued his attack. He stated that Mr. Warren had indifferent legal experience in the practice of law since his life had been devoted to private business, largely in dealing with sugar. Even the clerks of the United States Supreme Court could not remember his face. It would appear, by inference, stated Walsh, that if he were a prominent attorney he would certainly have been known by members of the Court.

Walsh contended that the Attorney General should not only be eminent in his profession but should have no blemishes upon his character or his past record in matters that would reflect upon his reputation and fair dealings with the public. Could Warren be placed in a category of this nature? He said that he thought not in regard to his ability as an attorney and in his business connections which were of such a nature as to affect public confidence in his fairness as Attorney General in specific matters that might come before him. He referred here to the connections of Warren from the beginning of the present century.⁸⁴

Walsh concluded that Warren might not proceed with fairness, if appointed Attorney General, in any suit that could arise concerning Sugar Trust matters. If the Michigan Sugar Company should be prosecuted by the Government, what position and what action could be expected from Warren as Attorney General?

Walsh further showed that other trusts were under investigation, among which was the notable example of Andrew Mellon's former Com-

⁸⁴For years Mr. Warren had been a representative in the State of Michigan of the Sugar Trust, which had been termed one of the most offensive and oppressive trusts in the entire nation. This organization had attempted to monopolize the supply of sugar of the American public. The Sugar Trust had gotten control of the Atlantic Coast refineries, and had manipulated the stock of the independent beet-sugar companies of Michigan in an attempt to get control of the sugar business in its entirety. At the turn of the present century it had become the controlling factor in the beet-sugar business of the country. Mr. Warren had acted as its agent in these deals, buying stock in his name and holding it in a fiduciary relationship for the Sugar Trust. In the manipulations of stock the Michigan Sugar Company had been formed with Warren as its president. He had remained the executive of this company until January 25, 1925, when he had resigned apparently to be in a position to accept the nomination for Attorney Generalship. In 1910 the Government of the United States had filed suit against the Sugar Trust, the Michigan Sugar Company and Mr. Warren. Under the Sherman Anti-Trust laws the Sugar Trust had finally been dissolved for restraining trade. In 1925, said Walsh, the Michigan Sugar Company had been charged by the Federal Trade Commission with being engaged in another conspiracy to restrain the trade of this nation.

pany, the Aluminum Company of America. Andrew Mellon was Secretary of the Treasury and a friend of Mr. Warren. What would Warren, if Attorney General, do if he were confronted with a required prosecution of the Aluminum Company of America?

The Montana Senator said that to confirm Warren would in essence mean that the Sherman Anti-Trust Act would be suspended while Warren was in office and that monopoly would run riot in this country.⁸⁵

Senator Cummins, Republican of Iowa, was Warren's leading proponent. He had known the nominee for more than twenty years and had found him a capable and moral citizen. Warren had previously been confirmed by the Senate as ambassador to Japan and to Mexico, in which positions he had rendered meritorious service. These confirmations had been made since the Sugar Trust dissolution suit of 1910. He had represented the Government with a marked legal capacity in two international arbitration cases. Since Walsh had stated that he would vote for Warren's confirmation for any position other than that of Attorney General, it appeared strange that the nominee's character was good for any position other than this one. Cummins stated that the arguments of Walsh were unsound. There was no logic in a statement that a lawyer could defend only one set of interests forever. The real issue involved would amuse any man. It was that some time in the future a case "might" arise that "might" call for Warren's prosecution and he "might" not perform his duty because of former connections. Warren had conducted himself well on every occasion of his employment by the Government. Facts and not hypothecations should govern the minds of men.

Mr. Cummins believed that the President should have free choice in the selections of his Cabinet and that he should be held accountable for his nominees. All that could possibly be required in any case would be adequately accomplished by this method.⁸⁶

Mr. Bayard, Democratic Senator from Delaware, took issue with Cummins on his statements. He wanted to know if the President had always been held accountable for his Cabinet. This invoked a reply from Cummins that the Democratic Party had certainly tried to hold Coolidge responsible for the Harding Cabinet in the 1924 elections. Mr. Bayard stated that he would not give the President complete choice of his Cabinet selectees.

Mr. Gillett, Republican Senator from Massachusetts, thought that the President's Cabinet nominations should be confirmed unless there

⁸⁵ For pertinent arguments see CONG. REC., 69TH CONG., Vol. LXVII, 18-19, 31-32, 74-75, 83-84, 254-58.

⁸⁶ *Ibid.*

were glaring charges of incompetency against them. Senator Borah, Republican of Idaho, stated that he was against the Warren confirmation because the facts as presented indicated that he was unfit for the position. Fitness was the test in confirmation. Borah said that the Senate must do its constitutional duty in respect to Cabinet nominations as well as in other matters. The Senate was held jointly responsible for all nominations confirmed and must see that the Harding debacle was not repeated. He said that only upon the most substantial grounds and the most controlling reasons should the Senators oppose Presidential nominations to the Cabinet. The facts in the present case showed that Warren was an exception and should not, for the public's interest, be approved. Senator Norris, Republican from Nebraska, feared Warren's confirmation because of his Big Business connections.⁸⁷

Senator Reed, Democrat from Missouri, opposed Warren because the nominee was not a proper person to enforce the Anti-Trust laws of the country.⁸⁸ Senator Couzens, Republican from Michigan, stated that he was opposed to Warren because the public could have no confidence in the man in any enforcement of the Anti-Trust laws. He said that his colleague, Senator Ferris, Democrat from Michigan, felt similarly.⁸⁹

Senator Goff, Republican from West Virginia, favored Warren, because he was an attorney of great ability. He felt that the President should have the right to choose his Cabinet and that he should be held responsible to the nation for his selectees.⁹⁰ Senator Overman, Democrat from North Carolina, who voted against Warren on the principle of party regularity, stated that it was the right of the President to appoint his Cabinet officers and that if the laws were not enforced, the responsibility would rest on the President.⁹¹ Senator Frank B. Willis, Republican from Ohio, speaking on March 18th before the annual dinner of the Central Mercantile Association of Ohio, stated that the rejection by the Senate of Charles B. Warren was an unwarranted interference with the prerogatives of the President.⁹²

Coolidge's second attempt in March 1925 to have Warren confirmed was blocked in the Senate. He attempted to have Warren accept a recess appointment which the nominee refused. Coolidge then nominated an obscure lawyer from Vermont, Mr. Sargent, for the position. He was confirmed at once probably because the Senate wished

⁸⁷ *Ibid.*

⁸⁸ *Id.* at 74.

⁸⁹ *Id.* at 100.

⁹⁰ *Id.* at 250-251.

⁹¹ N. Y. Times, March 11, 1925, Vol. LXXIV, No. 24, 518, p. 5.

⁹² N. Y. Times, March 19, 1925, No. 24, 526, p. 2.

to finish business and return home, and because nothing unfavorable appeared to exist against him.

Many reasons can be assigned why the nomination of Charles B. Warren was refused confirmation. The two most pertinent seem to be the Presidential-Old Guard battle with a Senate in rebellion, and the fear and dislike that many of the Senators held for Warren because of his "Sugar" connections.

Why was the Senate at odds with the President? The Senate was composed of four groups who were antagonistic to the administration, namely, the Democrats apparently for partisan reasons, the Insurgents who were against "Big Business" for fear of a recurrence of the Harding scandals and who voted as irregulars, the "Radicals" who were read out of the party because of their disloyalty in the 1924 Presidential election, and the Farmer-Laborites who were disposed to follow any policy against the vested interests of the moneyclass.

The Harding era had cast its shadow over anything that Coolidge might do. Ever in the minds of the opposition was the fear of another debacle similar to the Denby-Fall-Daugherty affair. The people might consume only so much public corruption. The chain was tense—public opinion might rise to cast out those who favored "Big Business" and the money-magnates. Coolidge, as well as Harding, seemed to favor the interests of Big Business. The opposition naturally formed a coalition. The alliance of the four groups in opposition to the administration was based not alone on partisan grounds but also on the fear of corruption that had flowed from Big Business and might do so again with a "Sugar-coated" Warren as Attorney General.

Coolidge had not endeared himself to the Senate by his curt reply to that body when asked to rid himself of Denby. Who was the master—the President or the Senate? The Senate would show its powers conceivably in the People's interest. Coolidge was a cold type of personality who made few friends. His leadership could never be forceful and to dominate a Senate made up of many factions there had to be enterprise and ingenuity in the President. Coolidge, though honest, was not a Jackson or an F. D. Roosevelt. There was no magnetism in the man.

The Republican party lacked leadership in the Senate, and was a poorly organized body. The party should never have been caught by a surprise vote as happened in the first ballot on March 10th with the Vice President taking a nap in a distant hotel. Neither was it feasible to read the "Radical" group out of the party before the confirmation of Warren.

Warren was not liked. Some thought him an egoist, and many viewed him as a schemer who after he was placed in office would take

advice from no one. His reputation as an agent-representative-lawyer for the Sugar Trust and as president of the Michigan Sugar Company had not endeared him to the foes of Big Business. Too much "oil had passed over the dam" for many of the Senators to take kindly to a "Sugar-sweetened" man of the Warren type.

It is true that he had held responsible positions in the Government and had been confirmed by the Senate on the two occasions for ambassadorships. He had proven himself an able lawyer in the international arbitration cases. He had demonstrated that he was a man of energy and dispatch by his dealings in sugar, but those dealings had also indicated his Big Business connections. There was doubt as to what the Sherman Anti-Trust Act meant at the turn of the century; there had been far less question of its meaning in recent years, yet his Company, the Michigan Sugar Company, of which he was President until January 1925, was even then being investigated by the Federal Trade Commission for a conspiracy to restrain trade. Could Warren prosecute his former companions and friends if he became Attorney General and in the event cases arose requiring such prosecution? He had never been convicted in court of any law violations, but there remained a doubt in the minds of many as to what he "might" do if confronted with a situation similar to that of Daugherty in the Harding era. Warren's opponents had much upon which to base their refusal of confirmation.

CONCLUSIONS

Weighing the cases of rejection, the usual custom of the Senate to confirm Cabinet nominees of the President, the desires of the "Founding Fathers" at the time the Constitution was drafted, the overall ability of the Senate as a co-equal with the President in confirming wisely the nominees before it, it would seem that the Senate should remain a part of the executive in confirmation of Cabinet appointees.

However, the Senate's use of the word "unfitness" as to confirmation of Cabinet nominees should rise above partisan politics and the emotionalism that may develop between the Senate and the President. The test of whether a nominee should or should not be confirmed should be his ability and loyalty to serve the President and the American people well as a public servant. It is feared that, at times, this test has not been applied judiciously by the Senate.