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# Removal Power of the President and the Test of Responsibility

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# THE REMOVAL POWER OF THE PRESIDENT AND THE TEST OF RESPONSIBILITY

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The decisions of the Supreme Court of the United States on the exercise of removal power by the President have been the subject of considerable controversy. Justice Jackson criticized[1] *Humphrey's Executor v. United States*[2] as being a "switch" in the doctrine enunciated by the Supreme Court in *Myers v. United States*.[3] However, an evaluation of the cases involving the removal powers of the President indicates that the Supreme Court has been most consistent in adhering to precedent.

The decision of the Court in the *Humphrey* case emphasized the "character of the office" as the *ratio decidendi*. Thus, if the office is of a quasi-executive nature in its functions then the President has the power of removal; if the office is of a predominantly quasi-legislative or quasi-judicial nature in its functions then the President does not have this power.[4] On its surface, the decision in the *Humphrey* case appears to conflict with the decision of the Court in the *Myers* case. Or, as Mr. Justice Sutherland said in his opinion in the *Humphrey* case:

> To the extent that, between the decision in the Myers case, which sustains the unrestrictable power of the President to remove purely executive officers, and our present decision that such power does not extend to an office such as that here involved, there shall remain a field of doubt, we leave such cases as may fall within it for future consideration and determination as they may arise.[5]

However, there is manifested in the *Humphrey* decision a broader *ratio decidendi*, the "test of responsibility," which would eliminate the field of doubt noted by Mr. Justice Sutherland. An examination of the cases involving the exercise of removal power by the President indicates that where the President has been *responsible* for the administration of a particular function of government, his use of the removal power has been upheld by the Supreme Court though ostensibly on narrower grounds than that of "responsibility." But, in cases where the President has exercised the removal power without having the responsibility for administration vested in him by a Constitutional grant of authority or

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* See Contributors' Section, Masthead, p. 94, for biographical data.

1 Jackson, The Struggle for Judicial Supremacy 107-9 (1941).

2 295 U.S. 602 (1935).

3 272 U.S. 52 (1926).

4 Humphrey's Executor v. United States, 295 U.S. 602 (1935).

5 Id. at 631-2.

delegated to him by an act of Congress, the Supreme Court has invalidated presidential removals. The thesis of this article is that the term "character of the office" not only relates to the nature and function of the office as the determinant of proper exercise of presidential removal power, but also contains a more basic and fundamental determinant for the valid use of the removal power—a "test of responsibility." In order to evaluate the reliability of this proposed test, examination will be made of: (a) relevant cases, (b) its relationship to the fundamental "separation of powers" doctrine, and, (c) the possible conflict of the "test of responsibility" with the duties assigned to the President by the United States Constitution: to "take care that the laws be faithfully executed."

## Relevant Cases

Mr. Justice Peckham, delivering the opinion of the Court in *Parsons v. United States*,[6] discussed the historical development of the power of the President to remove any officer which he had appointed by and with the advice and consent of the Senate. He quoted the remarks of Mr. James Madison made in the House of Representatives on May 19, 1789:

> That it is the opinion of this committee that there shall be established an executive department, to be denominated the department of foreign affairs; at the head of which there shall be an officer to be called the secretary of the department of foreign affairs, who shall be appointed by the President by and with the advice and consent of the Senate; and to be removable by the President.[7]

After an extensive debate, Congress adopted a bill for this department which contained Mr. Madison's interpretation of the Constitution.[8] It is noteworthy that Mr. Madison advocated the establishment of an "executive" department. This classification of the department leaves no room for doubt that he intended the President to be responsible for the operation of the department and, through the removal power, have adequate means to control its operation.

In *Marbury v. Madison*,[9] Chief Justice Marshall had held that a justice of the peace of the District of Columbia, appointed in accord with existing law, was not removable at the will of the President:

> Mr. Marbury, then, since his commission was signed by President, and sealed by the Secretary of State, was appointed; and as the law creating

[6] 167 U.S. 324 (1897).

[7] Id. at 328-30, quoting from 1 Lloyd, Congressional Register 350-1.

[8] Ibid.

[9] 1 Cranch 137 (U.S. 1803).

> the office gave the officer the right to hold for five years, *independent of the executive,* the appointment was not revocable, but vested in the officer legal rights, which are protected by the laws of his country.[10] (Emphasis supplied.)

Mr. Justice Peckham, in reviewing *Marbury v. Madison,* said that Congress had exclusive jurisdiction over the District of Columbia, the district in which the appointment as justice of the peace was to be exercised. In the District of Columbia the President's power to remove an officer was inoperable, since its officers, though appointed and commissioned by a President of the United States, were responsible to and under the exclusive direction of Congress. Thus, the accepted *dictum* in *Marbury v. Madison* assumes added significance. In the opinion of Chief Justice Marshall, President Jefferson lacked the authority to deny Marbury his commission as a justice of the peace since President Adams had conferred this commission on Marbury according to the prescribed will of the body charged by the Constitution with the exclusive legislative control of the area in which the commission was to be used.[11] It would seem then, that the President could not invade the exclusive jurisdiction of Congress except as that body was willing to make specific grants of authority.

In the *Parsons* case the Court upheld the right of the President of the United States to remove Parsons, a United States District Attorney. The opinion emphasized the repeal of the Tenure of Office Act and found almost illimitable grounds for the exercise of the presidential removal power.

The Tenure of Office Act of 1867[12] had overruled a practice followed by the government since 1789 by denying to the President the power to remove or suspend government personnel. The Act had been augmented by the Army Appropriation Act of 1867,[13] which required the President to obtain the advice and consent of the Senate before he could remove an officer of the Army, even though this power of removal was contained in the Constitutional designation of the President as Commander-in-Chief of the Army and Navy. Though President Johnson vetoed these acts on the ground that they created unconstitutional restrictions on the President's power of removal, their subsequent passage reduced the authority, power, and responsibility of the President contained in the Constitution. In 1887, all the restrictions of the Acts of

10 Id. at 162.

11 U.S. Const. Art. I, § 8, cl. 17.

12 14 Stat. 430 (1867), Rev. Stat. § 1767-1772 (1875).

13 14 Stat. 485 (1867).

1867 were repealed by Congress,[14] thereby marking a return to the concept of Constitutional supremacy after a twenty year period of Congressional supremacy.[15] Said Mr. Justice Peckham:

> We are satisfied that its intention in the repeal of the tenure of office sections of the Revised Statutes was *again to concede to the President the power of removal* if taken from him by the original of office act, and by reason of the repeal to thereby enable him to remove an officer *when in his discretion he regards it for the public good,* although the term of office may have been limited by the words of the statute creating the office.[16] (Emphasis supplied.)

Mr. Justice Peckham also quoted the opinion of Mr. Justice Harlan in *McAllister v. United States,*[17] decided in 1891, to show the continuity of the Supreme Court in adhering to *Marbury v. Madison:*

> The decision in the present case is a recognition of the complete authority of Congress over territorial offices, in virtue of "those general powers which that body possesses over the Territories of the United States," as *Marbury v. Madison* was a recognition of the power of Congress over the term of office of a Justice of the Peace for the District of Columbia.[18]

Likewise, Mr. Justice Peckham stated that the *McAllister* case "contains nothing in opposition to the . . . construction that had been given to the Constitution by Congress in 1789 and by the Government generally since that time and up to the act of 1867."[19] For in sustaining the action of the President in removing McAllister as judge of a "legislative" court established by Congress in Alaskan Territory, Mr. Justice Harlan pointed out that the power granted to Congress by the Constitution to administer territories of the United States constituted a sufficient basis for Congress to delegate the power of removal of certain government officials to the President, and here Congress had delegated this authority to the President.[20] Clearly, since the Constitution assigns the control

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14 24 Stat. 500 (1887).

15 Parsons v. United States, 167 U.S. 324, 339-41, 343 (1897).

16 Id. at 343.

17 141 U.S. 174 (1891).

18 Id. at 189.

19 Parsons v. United States, 167 U.S. 324, 337 (1897).

20 Rev. Stat. § 1786 (1875). Moreover, the act creating the civil government for the Alaskan Territory assigned the administrative responsibility for this territory to the President of the United States.

> Sec. 2. That there shall be appointed for the said district [of Alaska] a governor. . . . He shall make an annual report . . . to the President of the United States, of his official acts and doings, and of the condition of the said district, with reference to its resources, industries, population, and the administration of the civil government thereof. And the President of the United States shall have power to review and to confirm or annul any reprieves granted or other acts done by him.

23 Stat. 24 (1884).

of territories of the United States to Congress, the President has only that amount of control over territories of the United States which Congress is willing to delegate to him.

Similarly, in the *Parsons* case the act of Congress establishing the Department of Justice named it an "executive" department,[21] thereby delegating the necessary administrative control of that department to the President while retaining overall control only through the power of the purse and its ultimate legislative power over the department. Thus by upholding the President's power to remove Parsons and McAllister the Supreme Court gave its endorsement to the President to remove personnel who were *responsible* to him.

In the case of *Myers v. United States*,[22] the court answered the specific question: Did the President have the power to remove a postmaster of the first class without the advice and consent of the Senate as required by the statute? Chief Justice Taft said:

> The power to remove inferior *executive* officers, like that to remove superior *executive* officers, is an incident of the power to appoint them, and is in its nature *an executive power*. . . .[23]
>
> Article II [of the Constitution] grants to the President the executive power of the Government, i.e., the general administrative control of those executing the laws, including the power of appointment and *removal of executive officers*—a conclusion confirmed by his obligation to take care that the laws be faithfully executed. . . .[24] (Emphasis supplied.)

Even though the Constitution delegates the power to establish post offices and post roads to Congress,[25] it seems quite clear that the Court, by using the word "executive" and the words "removal of executive officers," felt that the Act of Congress establishing the postal system gave the responsibility of its administration to the President. This conclusion is manifest in the act establishing the Post Office Department: "There shall be at the seat of the government an *executive* department to be known as the Post Office Department."[26] (Emphasis supplied.) Moreover Chief Justice Taft added:

> [T]he President's power of removal is further established as an incident to his specifically enumerated function of appointment by and with the advice and consent of the Senate, but that such incident does not by implication extend to removals the Senate's power of checking appointments; and finally that to hold otherwise would make it impossible for the Presi-

21 Rev. Stat. § 346 (1875), 5 U.S.C. § 291 (1952).

22 272 U.S. 52 (1926).

23 Id. at 161.

24 Id. at 164.

25 U.S. Const. Art. I, § 8, cl. 7.

26 Rev. Stat. § 388 (1875), 5 U.S.C. § 361 (1952).

> dent, in case of political or other differences with the Senate or Congress, to take care that the laws be faithfully executed.[27]

The function of appointment referred to in these remarks is a part of the process by which the President established an "executive" department, for which he was responsible. The Court, therefore, declared unconstitutional that portion of the act which required the removal of postmasters of the first class by the President to be subject to the advice and consent of the Senate. Here as in the *Parsons* and *McAllister* cases the responsibility of the President for the functioning of this office was well established by both the Constitution and act of Congress. This distinguished the *Marbury* case where Congress was responsible for the administration of the District of Columbia.

The Supreme Court also used the "test of responsibility" in *Humphrey's Executor v. United States*.[28] Mr. Justice Sutherland there said that Congress had not relinquished its power to regulate interstate commerce by creating the Federal Trade Commission, except to grant the President the power to remove officials for cause.

> [T]he language of the act, the legislative reports, and the general purpose of the legislation as reflected by the debates, all combine to demonstrate the Congressional intent to create a body . . . which shall be independent of executive authority, except *in its selection*, and to exercise its judgment without the leave or hindrance of any other official or any department of the government.[29]

It is particularly significant that the act itself requires that the Commission must report to Congress, not to the President. Therefore, the Court held that the President could not remove Humphrey because Congress, not the President, was in charge of the Federal Trade Commission. Mr. Justice Sutherland emphasized this distinguishing characteristic of the *Humphrey* case:

> The office of a postmaster is so essentially unlike the office now involved that the decision in the Myers case cannot be accepted as controlling our decision here. A postmaster is an executive officer restricted to the performance of executive functions. He is charged with no duty at all related to either the legislative or judicial power. . . . Putting aside *dicta*, which may be followed if sufficiently persuasive but which are not controlling, the necessary reach of the decision goes far enough to include all purely executive officers. It goes no farther;—much less does it include an officer who occupies no place in the executive department and who exercises no part of the executive power vested by the Constitution in the President.[30]

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[27] Myers v. United States, 272 U.S. 52, 164 (1926).

[28] 295 U.S. 602 (1935).

[29] Id. at 625.

[30] Ibid.

This quotation reveals that the element of control over personnel necessary for the administration of the President's responsibility is a *sine qua non* in determining whether he has the authority to exercise the power of removal. If the power to control and direct the personnel of the government is not granted to the President by either the Constitution or by act of Congress, the President is not responsible for the discharge of duties by such officials, and thus does not have authority to remove these government officials.

*Morgan v. Tennessee Valley Authority*[31] further buttresses the argument for the existence of a "test of responsibility." There the Circuit Court upheld the President in removing Morgan, a member of the Board, which performed all three functions: quasi-executive, quasi-legislative, and quasi-judicial. An examination of the statute definitely fixes the responsibility of the President to Congress for the operation and functioning of this Board, regardless of how it accomplishes its assigned duties (quasi-executive, quasi-legislative, or quasi-judicial).[32] Had the Congress intended to retain control over the Tennessee Valley Authority, it would have required the Board to make its reports and recommendations to Congress instead of providing that the "President shall . . . recommend to Congress."

The District Court, in the *Morgan* case, also applied the "test of responsibility." The opinion of this court reads:

> I am further of opinion that the chief executive has the power of removal as an incident to the power of appointment, or under the constitutional grant of authority, or both, in the absence of legislative limitation, whether or not the officer involved is predominantly engaged in the exercise of quasi legislative or quasi judicial functions. . . . I am further of opinion that any attempted legislative limitation should be by express provision, or by the clearest implication.[33]

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31 115 F.2d 990 (6th Cir. 1940), cert. denied, 312 U.S. 701 (1941).

32 The act provides:

> The president is hereby authorized, by such means or methods as he may deem proper within the limits of appropriations made therefore by Congress, to make such surveys . . . for such Tennessee basin . . . as may be useful to Congress.
>
> The president shall, from time to time, as the work provided for in Section 831, u, [supra] progresses, recommend to Congress such legislation as he deems proper to carry out the general purposes stated in the said section, and for the especial purpose . . . [of] (1) the maximum amount of flood control; (2) the maximum development of said Tennessee River for navigation.
>
> The President of the United States is hereby authorized to acquire title in the name of the United States to such rights or such property and to provide payment for same by directing the board to contract to deliver power generated. . . . The President is further authorized to sell or lease . . . any vacant real estate.

48 Stat. 69 (1933), 16 U.S.C. § 831 (u), (v), (w) (1952).

33 Morgan v. Tennessee Valley Authority, 28 F. Supp. 732, 737 (E.D. Tenn. 1939).

Here the court has partially rested its case on the "constitutional grant of authority." At the same time the Court disclosed that the grant of authority could be restricted by future acts of Congress, just as Congress had earlier fixed administrative responsibility for the Tennessee Valley Authority in the Executive, by saying: "I am further of opinion that any attempted legislative limitation should be by express provision, or by the clearest implication." This last remark would have been valueless if the court did not believe first, that Congress could delegate this authority to the President, and secondly, that had Congress intended to restrict the administrative control delegated to the President it would have made some definite provision for it aside from cause.

By use of the "test of responsibility," the decisions in the presidential removal cases, including the *Humphrey* case, present a clear and unbroken stream of consistent practice by the Supreme Court.

THE "TEST OF RESPONSIBILITY" AND THE "SEPARATION OF POWERS"

The decision of the Supreme Court in *Marbury v. Madison*[34] marked the beginning of the role of the Supreme Court as the final arbiter in the interpretation of the United States Constitution. In addition to determining the meaning of the words of the Constitution, the Court has had to assume the responsibility for upholding the fundamental doctrine of limited government which the framers of the Constitution sought to accomplish by the written constitution, embodying the doctrines of separation of powers and checks and balances. The "test of responsibility" therefore must conform to the doctrines of separation of powers and checks and balances if it is to be a valid measure of the limits of the removal power of the President.

Mr. Madison's proposal of May 19, 1789, in the House of Representatives indicated that he believed that the executive should have the power to remove executive officers. This proposal carried with it the idea that the President would have control and responsibility in the executive branch of the national government. Though this belief conforms to the doctrine of separation of powers, it does not answer the question of how far the power of the executive can be extended in the name of checks and balances. The remarks of Mr. Madison in *The Federalist* indicate that the framers of the Constitution may have intended some limitation on the "checks and balances" found in the division of powers in the Constitution.

[34] 1 Cranch 137 (U.S. 1803).

> [T]here is not a single instance in which the several departments of power [of the several states] have been kept absolutely separate and distinct. New Hampshire, whose constitution was the last formed, seems to have been fully aware of the impossibility and inexpediency of avoiding any mixture whatever of these departments, and has qualified the doctrine by declaring "that the legislative, executive, and judiciary powers ought to be kept *as separate from, and independent of, each other as the nature of a free government will admit; or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of unity and amity.*" Her constitution accordingly mixes these departments in several respects. . . .
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> . . . It is but too obvious that in some instances the fundamental principle under consideration has been violated by too great a mixture, and even an actual consolidation, of the different powers; and that in no instance has a competent provision been made for maintaining in practice the separation delineated on paper.[35]

While Mr. Madison believed in some mingling of the powers of government, one may seriously question whether he would have favored an extension of the power of one branch of the national government to the point where it could completely thwart the intent of the other branches of the government, unless specifically authorized by the Constitution. Mr. Madison would not have endorsed the placing of a quasi-legislative agency or commission, which was responsible to Congress under the close control of the President by granting to him the unlimited exercise of the removal power. Such an arrangement would give the President power over an agency for which he would not be responsible. In *Humphrey's Executor v. United States*,[36] the court rejected the argument which sought to promote this very situation.

The decision of the Supreme Court in *Myers v. United States*[37] illustrates that there are some areas of authority where Congress cannot intrude. In this case, the Court upheld the power of the President to remove an executive officer. By way of *dictum* the Court interpreted strictly the powers of Congress contained in Article II of the Constitution:[38] "But the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments." The Court said:

> Congress is only given power to provide for appointments and removals of inferior officers after it has vested, and on the condition that it does vest, their appointment in other authority than the President with the Senate's consent; that the provisions of the second section of Article II, which blend

35 The Federalist, No. 47 at 316, 320 (Modern Library ed.).

36 295 U.S. 602 (1935).

37 272 U.S. 52 (1926).

38 U.S. Const. Art. II, § 2, cl. 2.

> action by the legislative branch, or by part of it, in the work of the executive, are limitations to be strictly construed and not to be extended by implication. . . . [39]

This *dictum* indicates that the Court believed that Congress could not delegate administrative control of a branch of the government to the President and then freely interfere with the work of the executive except in the most limited manner. How else could the "separation of powers" doctrine of our Constitution be effectively maintained? Clearly, this limitation on the powers of Congress conforms to the "test of responsibility."

On the other hand, the argument proposed by the United States in *Humphrey* case, that according to the *dictum* in the *Myers* case the President should have been able to remove Humphrey, would, if followed, have contravened our fundamental "separation of powers" doctrine. Under the arrangement envisaged by this argument the Federal Trade Commission would have been submitting its reports to Congress, yet through the President's power of removal, the Commission would have been subservient to the direct and close control of the President. The President has a voice in interstate commerce only to the extent that Congress expressly authorizes it; and even then, Congress cannot delegate the whole of the legislative power to the President, but must impose legislative standards to limit and control the action of the President. Therefore, by holding for Humphrey the court manifestly indicated that the President's power of removal could not be extended into areas of legislative authority without either Constitutional authority or the express delegation of the power by Congress.

An examination of the *Humphrey* opinion shows that the Court considered the "test of responsibility" in relation to the doctrine of "separation of powers":

> We think it plain under the Constitution that illimitable power of removal is not possessed by the President. . . . The authority of Congress, in creating quasi-legislative or quasi-judicial agencies, to require them to act in discharge of their duties *independently of executive* control cannot well be doubted; and that authority includes as an appropriate incident, power to fix the period during which they shall continue in office, and to forbid their removal except for cause in the meantime. . . .
>
> The fundamental necessity of maintaining each of the three general departments of government entirely free from the control or coercive influence, direct or indirect, of either of the others, has often been stressed and is hardly open to serious question. So much is implied by the very fact of the separation of the powers of these departments by the Constitution;

[39] 272 U.S. 52, 164 (1926).

> and in the rule which recognizes their essential co-equality. *The sound application of a principle that makes one master in his own house precludes him from imposing his control in the house of another who is master there.*[40] (Emphasis supplied.)

Obviously the Supreme Court was aware of its duty to maintain the doctrine of "separation of powers" but it did not intend to change the boundaries of these three areas of power so carefully drawn in the Constitution. Throughout the history of the United States the Court has often been compelled to police the areas of power marked out in the Constitution. In *Marbury v. Madison,* the Court refused an extension of its own power contained in the Judiciary Act of 1789. In *Schechter Poultry Corporation v. United States*[41] and *Yakus v. United States,*[42] the Court required Congress to retain a certain amount of legislative control over delegations of administrative authority and so in the *Humphrey* case, the Court imposed definite limits on the exercise of executive power by restraining the President from invading an area expressly reserved to Congress in the Constitution: control over interstate commerce where Congress had not delegated authority to the President beyond that of a highly restricted power to remove administrators for cause and cause alone.

THE "TEST OF RESPONSIBILITY" AND THE DUTY OF THE PRESIDENT

There exists another possible conflict in the application of the "test of responsibility": a conflict between the limited power of the President implicit in the "test of responsibility" and the apparently broad grants of presidential power contained in the Constitution "that I will faithfully execute the office of President of the United States, and will . . . preserve, protect and defend the Constitution of the United States," and "take care that the laws be faithfully executed."[43] These have often been referred to as the omnibus powers of the President and appear to extend the authority of the President far beyond the specific grants of executive power contained in the Constitution. The "test of responsibility" will have to be reconciled with these seemingly extensive grants of power if it is to have validity. The treatment accorded the power of the Executive, contained in quotations from the Constitution, *The Federalist* and the remarks of Mr. Justice Sutherland in the *Humphrey* case further illustrate the cogency of this test.

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40 295 U.S. 602, 629-30 (1935).

41 295 U.S. 495 (1935).

42 321 U.S. 414 (1944).

43 U.S. Const. Art. II, § 1, cl. 7 and Art. II, § 3.

The authors of *The Federalist,* Hamilton, Madison, and Jay, discussed the executive power contained in the Constitution from the viewpoint of specific grants of power and further powers of the Executive. Hamilton's remarks in *The Federalist* reveal his interpretation of the omnibus powers of the President:

> The administration of government, in its largest sense, comprehends all the operations of the body politic, whether legislative, executive, or judiciary; but in its most usual and perhaps in its most precise significance, it is limited to executive details, and falls peculiarly within the province of the executive department. The actual conduct of foreign negotiations, the preparatory plans of finance, the application and disbursement of the public moneys in conformity to the general appropriations of the legislature, the arrangement of the army and navy, the direction of the operations of war, —these, and other matters of like nature, constitute what seems to be most properly understood by the administration of government.[44]

The office of the President, according to Hamilton's beliefs does not have as extensive powers as may be inferred from the provisions of the Constitution, but is limited to the specifically enumerated powers contained in the Constitution and the duty of filling in details of administration assigned by Congress to the President. *The Federalist* does not accord more than the briefest mention to the supposedly broad grant of power contained in the phrase of the Constitution, ". . . he shall take care that the laws be faithfully executed." If this phrase contained a broad grant of executive power it is unlikely that it would have escaped criticism by those who opposed the adoption of the Constitution. It also would have been subject to the fullest explanation by authors of *The Federalist* in their attempts to secure adoption of the Constitution.[45] This concept of limited executive power is found in the *Humphrey* decision where the Court refused to sanction the executive removal of an administrative official responsible to Congress. The Court indicated that the President had only limited power as the Chief Executive of the United States.[46]

Therefore, the President's duty to "take care that the laws be faithfully executed," cannot be extended even by implication or inference to permit the intrusion of the President into areas of our national government neither open to him by a grant of authority contained in the Constitution nor delegated to him by the Congress. Thus the use of the "test of responsibility" will not limit duties given to the President by the Constitution, but instead may serve as a guide to the proper exercise of the presidential removal power.

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44 The Federalist, No. 72 at 468-9 (Modern Library ed.).

45 Id. at 501.

46 Humphrey's Executor v. United States, 295 U.S. 602, 629-30 (1935).

## CONCLUSION

The establishment of the "test of responsibility" as the criterion for the exercise of removal power strongly indicates that the framers of the Constitution designed a system of government which contains both a doctrine of limited government and its companion concept—limited responsibility. The evaluation of cases involving the exercise of presidential removal power indicates that the "test of responsibility" has been the *ratio decidendi* though the Court has used rather vague and confusing expressions. In addition, the suggested test conforms to the separation of powers and checks and balances doctrines as well as to the idea of limited presidential authority in the Constitutional grant of executive power. Therefore, it appears that the "test of responsibility" is a reliable measure for determining where the President of the United States may properly exercise his power of removal.