A Congress Rises From the Ashes

With the defeat of the Confederate States of America in 1865, the victorious Union faced the question of how to rebuild a single nation. Congress and the Democratic Party were tainted by their association with “Copperheads,” who had sought peace at the price of recognizing the Confederacy as a sovereign nation. For this reason, the powers of both Congress and the Democratic Party were at their lowest point, and the Republicans and their president reigned supreme.

John Wilkes Booth changed all of that with a single gunshot. With the death of Abraham Lincoln, Tennessee Senator Andrew Johnson, a pro-Union Southerner who had been elevated to the Vice-Presidency in 1864, became President of the United States.

While Congress was still out of session, Andrew Johnson controversially attempted to allow the former Confederate States’ representatives to take their seats in Congress. This move outraged many in the North and West.

Congress was determined not to let the victory won on the battlefield be turned into a defeat in its own chambers. It lost no time in curtailing the power of the president and the former rebel states. Refusing to seat the hastily elected Southern representatives, the Congress passed the Civil Rights Act of 1866 and the Freedmen’s Bureau Bill to safeguard the rights of the former slaves. When Johnson vetoed both bills, the Congress quickly overrode the vetoes, something that had rarely been done up to that point. Because Johnson kept campaigning against the measures (though he could not take effective action against them), the people began to believe that he was determined to win a legal victory for the Southern states. This fear led the Radical Republicans to overwhelming victory in the elections of 1866. It also led them to a flurry of legislation, not only to squelch the resistance of former Confederates, but to remove the president who supported them. Senator James Grimes of Iowa remarked in December, 1866, “The President has no power to control or influence anybody, and legislation will be carried on entirely regardless of his opinion or wishes.”

To ensure its ascendancy, Congress voted itself into continuous session, removing any opportunity for President Johnson to manage the nation without them. The Congress then passed the Tenure of Office Act in order to safeguard its allies in the Cabinet against the president’s power to replace them. Believing the measure unconstitutional, Johnson defied it and fired Secretary of War Edwin Stanton. The House’s Joint Committee on Reconstruction recommended impeachment of Johnson that same day.

As the Senate moved to try President Johnson, a conviction seemed certain (and would have been, if the Senate had voted along party lines), but the Radicals, flush with power, seemed to put Johnson on trial more for the “crime” of not being Republican enough than for actually violating the law. Supreme Court Justice Curtis pleaded with the Senate not to make the conviction of
the president a matter of politics, but of justice. Enough senators listened so that President Johnson escaped conviction by one vote. Speaking for the Republicans who voted against conviction, Senator Grimes said, “Whatever my opinion of [Johnson]... I can do nothing which... may be construed into an approval of impeachment as a part of future political machinery.”

Justice Curtis’ warning helped the rule of law, critical to the maintenance of the balance of powers, to triumph over politics. However, even though the legal balance was maintained, the influence of the legislature grew tremendously.

The Redemption of the Democrats and the Dominant House

The power of the Republicans in Congress appeared supreme as of 1868. They had apparently safeguarded both the citizenship and the suffrage of African Americans by the passage of the Fourteenth and Fifteenth Amendments, and elected President Grant to replace the hapless Andrew Johnson. Encouraged by their dominance in the House, Republican Speakers gathered increasing amounts of power to themselves through the end of the 1860’s and into the 1870’s. Speaker James G. Blaine, using his power to determine the order of speeches, simply refused to recognize anyone opposed to bills he supported. The party and its leaders controlled the agenda and used its authority to bring about the reforms the party was elected to enact.

At the same time, however, Republicans were losing the confidence of the North due to a financial panic and corruption scandals. Moreover, the Republicans faced a Southern Democratic Party willing and able to use both voter-restriction laws and terrorism in the form of the Ku Klux Klan to stop African Americans from voting. With the loss of these Republican votes, Democrats swept the House in 1874, gaining a majority for the first time since the Civil War. Two years later, during the disputed presidential election of 1876, Republicans in Congress agreed to advise President Rutherford B. Hayes to withdraw federal troops from the last Southern states if Democrats would end the dispute. This resulted in the so-called “Solid South,” in which the Democratic Party reigned supreme, and African Americans would begin their long, voiceless march through the Jim Crow years.

Now in power, the Democrats of the House followed the Republicans’ lead in increasing the power of the Speaker. Speaker Samuel Randall changed the Rules Committee from a select committee of limited duration and power, into a standing committee with broader power. The Rules Committee was (and is) a powerful committee in the House because it determines the order in which bills are debated and voted upon in the House. It therefore can ensure that a bill has an opportunity to pass, or prevent it from even reaching the floor for a vote.

The rules of the House gave the Speaker power to appoint all members of all committees, and the Rules Committee, which the Speaker chaired, reserved the sole power to consider any further changes to House Rules. Randall’s successor, John Carlisle, went further by making sure that the chairman of the powerful Ways and Means Committee (in charge of taxation) and the Appropriations Committee (in charge of government spending) were always members of the Rules Committee. This made it easier for him to direct all the committees at once.

However, even Carlisle was frustrated by the practice of the “disappearing quorum,” in which
Congressmen opposed to a bill that they knew would pass refused to acknowledge that they were present to vote. Since the House could not vote without a minimum number of members (a quorum), Carlisle could not achieve his goal of lowering tariffs, which the Democrats had been elected to achieve. While the Speakers of the House had managed to increase their power to prevent legislation from being passed, they were still unable to force the passage of laws. Rather, they had ensured that all congressmen would have to vote strictly with their parties, or find themselves shut out of committees that would allow them to do meaningful work and be re-elected.

Reelection was not only determined by a congressman’s ability to successfully achieve legislation. Gradually, the people became aware that lobbyists representing business interests such as railroad barons, oil magnates, and sugar manufacturers were “entertaining” their congressmen in Washington. The Constitution’s requirement that Senators be elected by their state legislatures was supposed to ensure their skills as senior lawmakers and their status as superior statesmen. However, Senators such as Rhode Island’s Nelson Aldrich were suspected of corruption. They passed tariffs designed to allow large trusts to charge Americans far more for American goods than they would sell for if exposed to international competition. With an abundance of tariff money at their disposal, Congressmen provided generous “pork barrel” spending, or federal funding for local projects with little or no broader value. In return, those who had received those local benefits provided many forms of support to their congressmen at election time, establishing a foul cycle of corruption.

The Accession of the Czar and the Firing of the Cannon

By 1889 the solution to the problem of the deadlocked House was easily apparent to one man: Republican Thomas Reed of Maine. Disgusted with Democratic inability to ease the tariff, the nation had returned Republicans to power. Working with two like-minded friends, Joseph Cannon and William McKinley, Reed appointed them to the Rules Committee, and made them chairs of Ways and Means and Appropriations, respectively. The three were determined that the House would pass the laws they and their party wanted passed. They would not repeat the mistake of the Democrats; they would establish rules and procedures that would give them the power to enact the laws and policies they campaigned upon and which brought them into the majority.

The Republicans began the session by resolving to seat a Republican whose seat in the House had been contested. Knowing they would lose, the Democrats refused to answer the roll call, and the quorum “disappeared” again. Then, in a surprising move, Speaker Reed began to count the Democrats as present, whether they answered or not.

The House burst into screaming as the Democrats rose in dissent. One Kentucky Democrat cried out: “I deny your right, Mr. Speaker, to count me as present!” Reed coolly replied, “The chair is making a statement of fact that the gentleman from Kentucky is present. Does he deny it?” When Democrats threatened to physically leave the chamber, Reed ordered the doors locked. They hid under their desks. Reed’s counting continued, and the vote was held. In subsequent votes, Reed lowered the number required for a quorum to 100 and
refused to recognize any motion that he felt would delay the passage of laws. The power of the Speaker over the House was now absolute.

The party’s control over the Senate was less iron-clad. The Senate threatened to end its support for higher tariffs unless the House approved silver as valid currency and also gave the president more control over the tariff. The higher tariff and the resulting inflation cost many Republicans their seats, and threw the chamber to the Democrats in 1890. Reluctant to use Reed’s strong-arm tactics at first, Democrats soon found themselves with no choice but to imitate him or fall victim to the disappearing quorum.

When Reed returned to the Speaker’s chair in 1896 because of another financial crisis and fears of inflation, he quickly seized more control over his party. He was the first to appoint a “whip,” a lieutenant who would ensure through committee assignments and political deal-making that the Republicans would vote with the party. Democrats soon appointed their own “whip” and the position is now a fixture of Congress. However, with his power came more public attention, much of it negative. He was accused of ruling the House and nullifying the will of the people by blocking the motions of their representatives. This attitude earned him the nickname of “Czar” Reed.

It is perhaps surprising that a politician as strong and ruthless as Reed finally broke with his party over a completely unrelated issue: that of the Spanish-American War of 1898. Regarding the war as imperialistic and unjustified, Reed could not stand against the popular demand for the war. He resigned from the speakership, and left “Uncle” Joe Cannon in charge with perhaps more power than any Speaker in U.S. history.

However, with popular pressure for reform mounting, and the Progressive-minded Theodore Roosevelt in the Oval Office, Cannon’s days were numbered. Unlike Reed, Cannon relied very much on the power of stopping legislation, and this attitude did not match those of the people who were more and more convinced that they needed the Congress to actively intervene against the business interests and trusts that threatened them. Whereas Reed used party control to prevent the minority of Congress from obstructing the will of the people, Cannon used the same powers to thwart the ambitions of the majority in Congress.

Increasingly, the progressive Republican “Insurgents” as they were known, challenged Cannon’s “Stalwarts” and their death-grip on the House. In 1909 Insurgents succeeded in establishing a rule called “Calendar Wednesday,” a procedure in which a roll call is made of the committees. When a committee is called upon, it may bring up an “unprivileged bill” (one that the Rules Committee has not privileged to be considered) for consideration and a vote by the House. The following year Congressman George Norris of Nebraska surprised Cannon by introducing a resolution on Calendar Wednesday. His resolution undermined Cannon’s iron grip on the House by forbidding the Speaker from sitting on the Rules Committee. Caught off-guard, Cannon’s supporters responded that the resolution was not a matter of constitutional privilege and therefore could not be considered. Cannon allowed the debate over this point of order to last for days, and the nation was captivated.

Eventually the Republican Insurgents joined forces with the Democrats in the House. The Democrats agreed to support the Insurgents, but
only if the entire House could select the Rules Committee. Demanding a vote, they stripped “Uncle Joe” of his power, and gave the power to appoint the all-powerful Rules Committee back to the House itself. The era of parties dominated by Speakers was over, and with it, the parties themselves lost much of the power they had formerly possessed to ensure congressmen’s obedience. The members of Congress had liberated themselves from this dictatorial style of party leadership.

CRITICAL THINKING QUESTIONS

1. Explain why Andrew Johnson’s actions led to each of the following:
   a. The dominance of the federal government by Congress.
   b. The dominance of the Radical Republicans over the Moderates and Democrats.
   c. The dominance of the federal government over the states.

2. Consider the possible consequences if the Radical Republicans had managed to convict President Johnson at his impeachment trial. How might this decision have affected politics in the United States?

3. How did the Republican-dominated Congress lose so much power so quickly in the 1870s?

4. What factors made party loyalty so important to both Republican and Democratic Congressmen during the end of Reconstruction?

5. Do you think that Speaker Reed was justified in using his power to compel the House to vote on laws? Why or why not?

6. What was the primary reason that Speaker Joe Cannon was unable to keep the power given to him by Thomas Reed?
The separation of powers is a fundamental principle of the structure designed by the Framers in the Constitution. By delegating specific responsibilities to each branch, the Constitution aimed to keep a balance among the branches and prevent too much power from accumulating in any one part of the government. The balancing of powers is an ongoing and active struggle. Throughout the history of the United States this balance has shifted and changed, sometimes dramatically, sometimes subtly.

The impeachment power was one tool the Framers designed as a legislative check against executive authority. Article II Section 4 of the Constitution states that, “The President, Vice President and civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.” The House of Representatives has the power to bring articles of impeachment, while the Senate has the power to try all impeachments.

In the wake of the Civil War, Congress, feeling its power was being undermined, used the power of impeachment to attempt to remove the President from office.

With the conclusion of hostilities in the Civil War, the nation was left needing to bind up the wounds suffered during the war. Hundreds of thousands of young men had been killed on both sides. Nearly every family in the country had been impacted by this national tragedy. The government’s challenge was to craft a way forward that would help the country grow as a united people.

The legislative and executive branches had differing visions for how this healing would occur. The president, Andrew Johnson, had assumed office after the assassination of Abraham Lincoln. He favored a moderate approach to Reconstruction, calling for leniency for the South. Congress, particularly a group called Radical Republicans, called for a more aggressive plan. Johnson and Congress clashed from the beginning. Exercising his privilege as the executive, he vetoed several major pieces of legislation reasoning, among other things, that they were unconstitutional. In the midterm election of 1867, more Radical Republicans were elected, giving them a veto proof majority in both houses.

After another year of conflict, Congress voted to impeach Johnson. They brought impeachment on the grounds that Johnson violated an act specifically designed to entrap him, and passed over his veto. The act stated the president could not remove anyone from his Cabinet without the consent of the Senate. Johnson believed this law intruded on his privileges as the executive and
so he ignored the law, firing Secretary of War Edwin Stanton and replacing him with Major General Lorenzo Thomas. Though Johnson eventually was acquitted, the impeachment trial rocked the nation and raised fundamental questions regarding the roles and constitutional powers of the executive and the legislature.

Below are the formal Articles of Impeachment against President Andrew Johnson. Read them carefully, noting their format and what they say about Congress’s motivations for the impeachment.
Excerpts from the Articles of Impeachment of Andrew Johnson

Directions
Analyze these excerpts from the Articles of Impeachment of Andrew Johnson and answer the questions that follow. Feel free to annotate the document to aid in understanding it.

Articles of Impeachment of Andrew Johnson\(^1\)

February 21, 1868

PROCEEDINGS OF THE SENATE SITTING FOR THE TRIAL OF ANDREW JOHNSON PRESIDENT OF THE UNITED STATES

Exhibited by the House of Representatives of the United States, in the name of themselves and all the people of the United States, against Andrew Johnson, President of the United States, in maintenance and support of their impeachment against him for high crimes and misdemeanors in office.

ARTICLE I

... Andrew Johnson, President of the United States, ... unmindful of the high duties of his office, of his oath of office, and of the requirement of the Constitution that he should take care that the laws be faithfully executed, did unlawfully, and in violation of the Constitution and laws of the United States, issue and order in writing for the removal of Edwin M. Stanton from the office of Secretary for the Department of War, said Edwin M. Stanton having been theretofore duly appointed and commissioned, by and with the advice and consent of the Senate of the United States, as such Secretary, ...

EXECUTIVE MANSION,
Washington, D.C., February 21, 1868

SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States, you are hereby removed from the office of Secretary for the Department of War, and your functions as such will terminate upon receipt of this communication. You will transfer to Brevet Major General, Lorenzo Thomas, Adjutant General of the army, who has this day been authorized and empowered to act as Secretary of War ad interim, all records, books, papers, and other public property now in your custody and charge.

Respectfully yours,
ANDREW JOHNSON.

To the Hon. Edwin M. Stanton, Secretary of War Washington, D.C.

Which order was unlawfully issued with intent then and there to violate the act entitled “An

\(^1\)http://teachingamericanhistory.org/library/document/articles-of-impeachment-of-andrew-johnson/
act regulating the tenure of certain civil offices,” ...
... to remove said Edwin M. Stanton from the
office of Secretary for the Department of War, ...
whereby said Andrew Johnson, President of the
United States, did then and there commit, and
was guilty of a high misdemeanor in office.

ARTICLE II

... Andrew Johnson, President of the United
States, unmindful of the high duties of his office,
of his oath of office, and in violation of the
Constitution of the United States, and contrary
to the provisions of an act entitled “An act
regulating the tenure of certain civil offices,” ...
without the advice and consent of the Senate
of the United States, said Senate then and there
being in session, and without authority of law,
did, ... issue and deliver to one Lorenzo Thomas
a letter of authority in substance as follows, that
is to say:

EXECUTIVE MANSION,
Washington, D.C., February 21, 1868

SIR: The Hon. Edwin M. Stanton having
been this day removed from office as
Secretary for the Department of War, you
are hereby authorized and empowered to
act as Secretary of War ad interim, and will
immediately enter upon the discharge of the
duties pertaining to that office. Mr. Stanton
has been instructed to transfer to you all
the records, books, papers, and other public
property now in his custody and charge.
Respectfully, yours.

ANDREW JOHNSON

To Brevet Major General Lorenzo Thomas,
Adjutant General U.S. Army, Washington, D.C.

Then and there being no vacancy in said office
of Secretary for the Department of War, whereby
said Andrew Johnson, President of the United
States, did then and there commit, and was
guilty of a high misdemeanor in office.

...
ARTICLE IX

... Andrew Johnson, President of the United States, ... in disregard of the Constitution and the laws of the United States duly enacted, as commander-in-chief of the army of the United States, did bring before himself then and there William H. Emory, a major general by brevet in the army of the United States, ... as such commander-in-chief, declare to and instruct said Emory that part of a law of the United States, ... which provides, among other things, that “all orders and instructions relating to military operations issued by the President or Secretary of War shall be issued through the General of the army, and in case of his inability, through the next in rank,” was unconstitutional, ... Andrew Johnson then and there well knew, with intent thereby to induce said Emory, in his official capacity as commander of the Department of Washington, to violate the provisions of said act, and to ... obey such orders as he, the said Andrew Johnson, might make and give, and which should not be issued through the General of the army of the United States, according to the provisions of said act, and with the further intent thereby to enable him, the said Andrew Johnson, to prevent the execution of an act entitled “An act regulating the tenure of certain civil offices,” ... to unlawfully prevent Edwin M. Stanton, then being Secretary for the Department of War, from holding said office and discharging the duties thereof, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ARTICLE X

... Andrew Johnson, President of the United States, unmindful of the high duties of his office and the dignity and proprieties thereof, and of the harmony and courtesies which ought to exist and be maintained between the executive and legislative branches of the government of the United States, designing and intending to set aside the rightful authorities and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt and reproach the Congress of the United States, ...did, ... make and deliver with a loud voice certain intemperate, inflammatory and scandalous harangues, and did therein utter loud threats and bitter menaces as well against Congress as the laws of the United States ... which are set forth in the several specifications:....

SPECIFICATION FIRST. In this, that at Washington, in the District of Columbia, in the Executive Mansion, to a committee of citizens who called upon the President of the United States, speaking of and concerning the Congress of the United States, said Andrew Johnson, President of the United States, heretofore, to wit, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, did, in a loud voice, declare in substance and effect, among other things, that is to say:

“So far as the Executive Department of the government is concerned, the effort has been made to restore the Union, ... but as the work progressed, as reconstruction seemed to be taking place, and the country was becoming reunited, we found a disturbing and marring element opposing us. ...

We have witnessed in one department of the government every endeavor to prevent the restoration of peace, harmony, and Union. We have seen hanging upon the verge of the government, as it were, a body called, or which assumes to be, the Congress of the United States, while in fact it is a Congress of only a part of the States. We have seen
Handout C, page 4

this Congress pretend to be for the Union, when its every step and act tended to perpetuate disunion and make a disruption of States inevitable... We have seen Congress gradually encroach step by step upon constitutional rights, and violate day after day and month after month, fundamental principles of the government. We have seen a Congress that seemed to forget that there was a limit to the sphere and scope of legislation. We have seen a Congress in a minority assume to exercise power which, if allowed to be consummated, would result in despotism or monarchy itself.”

SPECIFICATION SECOND. ... at Cleveland, in the State of Ohio, ... before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did, in a loud voice, declare in substance and effect, among other things, that is to say:

“I will tell you what I did do. I called upon your Congress that is trying to break up the government... But what has Congress done? Have they done anything to restore the union of these States? No; On the contrary, they had done everything to prevent it; ... But Congress, factious and domineering, had undertaken to poison the minds of the American people.”

SPECIFICATION THIRD ... at St. Louis, in the State of Missouri, ... before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did, in a loud voice, declare, in substance and effect, among other things, that is to say:

...If you will take up the riot at New Orleans and trace it back to the radical Congress, you will find that the riot at New Orleans was substantially planned.... When you read the speeches that were made, ... you will there find that speeches were made incendiary in their character, exciting ... the black population, to arm themselves and prepare for the shedding of blood....

And I have been traduced, I have been slandered, I have been maligned, I have been called Judas Iscariot and all that. Now, my countrymen here to-night, it is very easy to indulge in epithets; it is easy to call a man a Judas and cry out traitor, but when he is called upon to give arguments and facts he is very often found wanting....

Well, let me say to you, if you will stand by me in this action, if you will stand by me in trying to give the people a fair chance – soldiers and citizens – to participate in these offices, God being willing, I will kick them out. I will kick them out just as fast as I can. ... I care not for threats. I do not intend to be bullied by enemies nor overawed by my friends. But, God willing, with your help, I will veto their measures whenever any of them come to me.”

Which said utterances, declarations, threats, and harangues, highly censurable in any, are peculiarly indecent and unbecoming in the Chief Magistrate of the United States, by means whereof said Andrew Johnson has brought the high office of the President of the United States into contempt, ridicule and disgrace, to the great scandal of all good citizens, whereby said Andrew Johnson, President of the United States, did commit, and was then and there guilty of a high misdemeanor in office.
ARTICLE XI
That said Andrew Johnson, President of the United States, unmindful of the high duties of his office, and of his oath of office, and in disregard of the Constitution and laws of the United States, did, ... by public speech, declare and affirm, in substance, that the thirty-ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same, but, on the contrary, was a Congress of only part of the States, thereby denying, and intending to deny, that the legislation of said Congress was valid or obligatory upon him, ... whereby the said Andrew Johnson, President of the United States, did, then, to wit, on the twenty-first day of February, A.D. one thousand eight hundred and sixty-eight, at the city of Washington, commit, and was guilty of, a high misdemeanor in office.

SCHUYLER COLFAX, Speaker of the House of Representatives.

Attest:
EDWARD MCPherson, Clerk of the House of Representatives.

CRITICAL THINKING QUESTIONS
1. What are the main charges that Congress issued against the president?
2. Given the evidence laid out in the articles, do you believe the charges are justified?
3. The Articles of Impeachment make reference to the Oath of Office taken by the President of the United States. What is the oath? Do you believe Andrew Johnson broke this oath? Why or why not?
4. Why did the Constitution’s Framers give Congress the power to impeach?
5. Is the president ever justified in refusing to execute a law passed by Congress? Why or why not?
6. The year of the impeachment, 1868, was a mere three years after the cessation of hostilities in the Civil War. The country was still on edge. What effect do you believe a constitutional power struggle had or could have had upon the country?
7. Andrew Johnson was eventually acquitted and he stayed in office for the remainder of his term. After reading the Articles of Impeachment, do you believe he should have been convicted and removed from office? Why or why not?
8. For the next several decades, Congress dominated the national stage, while the office of the presidency became less prominent. Many historians point to the impeachment of Andrew Johnson as the beginning of a reign by Congress. How do you think the impeachment proceedings and their result contributed to an increase in the influence of Congress?
EXTENSION

Have students research the following question. Their students write a short paragraph or journal entry in response to the question. Their answers should demonstrate sound logical thinking and articulate a clear thesis. The best answers will incorporate the principle of the separation of powers as part of their answer.

Impeachment was understood by the Founders to be a critical tool in maintaining the Separation of Power. However, only two president have ever been officially brought up on charges of impeachment. Other federal officials have been impeached and removed from office for various reasons, but no president has ever been convicted. Do you believe Congress’s power to impeach the president has been used too much, too little, or just right? Please explain your answer.