

Sec. 1—The President

Cl. 8—Oath of Office

OATH OF OFFICE

What is the time relationship between a President's assumption of office and his taking the oath? Apparently, the former comes first, this answer appearing to be the assumption of the language of the clause. The Second Congress assumed that President Washington took office on March 4, 1789,¹⁰⁷ although he did not take the oath until the following April 30.

That the oath the President is required to take might be considered to add anything to the powers of the President, because of his obligation to "preserve, protect and defend the Constitution," might appear to be rather a fanciful idea. But in President Jackson's message announcing his veto of the act renewing the Bank of the United States there is language which suggests that the President has the right to refuse to enforce both statutes and judicial decisions based on his own independent decision that they were unwarranted by the Constitution.¹⁰⁸ The idea next turned up in a message by President Lincoln justifying his suspension of the writ of *habeas corpus* without obtaining congressional authorization.¹⁰⁹ And counsel to President Johnson during his impeachment trial adverted to the theory, but only in passing.¹¹⁰ Beyond these isolated instances, it does not appear to be seriously contended that the oath adds anything to the President's powers.

SECTION 2. Clause 1. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Office, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

¹⁰⁷ Act of March 1, 1792, 1 Stat. 239, § 12.

¹⁰⁸ 2 J. Richardson, *supra*, at 576. Chief Justice Taney, who as a member of Jackson's Cabinet had drafted the message, later repudiated this possible reading of the message. 2 C. WARREN, *THE SUPREME COURT IN UNITED STATES HISTORY* 223-224 (1926).

¹⁰⁹ 6 J. Richardson, *supra*, at 25.

¹¹⁰ 2 TRIAL OF ANDREW JOHNSON 200, 293, 296 (1868).