

Sec. 3—Legislative, Diplomatic, and Law Enforcement Duties of the President

gress's specifically delegated powers, with any legal discretion which the President is not entitled to control was first asserted in unambiguous terms in President Jackson's Protest Message of April 15, 1834,⁷²³ defending his removal of Duane as Secretary of the Treasury, because of the latter's refusal to remove the deposits from the Bank of the United States. Here it is asserted "that the entire executive power is vested in the President;" that the power to remove those officers who are to aid him in the execution of the laws is an incident of that power; that the Secretary of the Treasury was such an officer; that the custody of the public property and money was an executive function exercised through the Secretary of the Treasury and his subordinates; that in the performance of these duties the Secretary was subject to the supervision and control of the President; and finally that the act establishing the Bank of the United States "did not, as it could not change the relation between the President and Secretary—did not release the former from his obligation to see the law faithfully executed nor the latter from the President's supervision and control."⁷²⁴ In short, the President's removal power, in this case unqualified, was the sanction provided by the Constitution for his power and duty to control his "subordinates" in all their official actions of public consequence.

***Congressional Power Versus Presidential Duty to the Law.*—**

The Court's 1838 decision in *Kendall v. United States ex rel. Stokes*,⁷²⁵ shed more light on congressional power to mandate actions by executive branch officials. The United States owed Stokes money, and when Postmaster General Kendall, at Jackson's instigation, refused to pay it, Congress passed a special act ordering payment. Kendall, however, still proved noncompliant, whereupon Stokes sought and obtained a mandamus in the United States circuit court for the District of Columbia, and on appeal this decision was affirmed by the Supreme Court. Although *Kendall*, like *Marbury v. Madison*, involved the question of the responsibility of a head of a department for the performance of a ministerial duty, the discussion by counsel before the Court and the Court's own opinion covered the entire subject of the relation of the President to his subordinates in the performance by them of statutory duties. The lower court had asserted that the duty of the President under the faithful execution clause gave him no other control over the officer than to see that he acts honestly, with proper motives, but no power to construe the law and see that the executive action conforms to it. Counsel for Kendall attacked this position vigorously, relying largely upon

⁷²³ 3 J. Richardson, *supra* at 1288.

⁷²⁴ *Id.* at 1304.

⁷²⁵ 37 U.S. (12 Pet.) 524 (1838).