THE IMPEACHMENT OF ANDREW JOHNSON: A Century of Writing

James E. Sefton

ONE OF THE BY-PRODUCTS of history is the "centennial observance." Three years ago the centennial of the Civil War closed and, with somewhat less attention, that of reconstruction began. Thus far we have had little of pomp and circumstance; but since the centennial of reconstruction will last until 1977 there remains ample time for Yankee ingenuity—or southern, for all that—to devise suitable festivities. We have just passed the centennial of the impeachment of Andrew Johnson, which circumstance suggests the utility of evaluating what historians have written on that episode over the past hundred years.

During the seventies and eighties impeachment participants labored over memoirs and narrative articles. In 1890 appeared the first significant production by a professional historian. Writing in the quarterly *Papers* of the infant American Historical Association, William A. Dunning set a tone of antipathy toward the Radical Republicans which he and many of his successors were to maintain.[1] He saw impeachment as a logical result of the struggle for hegemony in reconstruction policy-making which executive and legislature had begun in December, 1865. This combat had two dimensions: first, the quarrel over details of reconstruction procedures; second, and of greater import to Dunning, the threat to executive independence manifested in such laws as the Tenure of Office Act. Further, Congress had been the aggressor all along; Johnson had incurred impeachment in his struggle "to tear away the meshes which Congress was so mercilessly weaving about him."[2] Dunning considered the crisis an institutional one imperiling the principle of separation of powers, because to him the central question was whether the President could decline to execute a law he believed unconstitutional. In Dunning's opinion, the resolution of this question would determine the President's status in the federal government. If he had that power the President's will would ultimately be paramount to the legislature's; if not, he would be a mere clerk of the dominant group in Congress. John A. Bingham, one of seven congressmen chosen by the House as trial "Managers" or prosecuting attorneys, had pressed this point in his closing argument at the trial. "His appeal to senatorial *esprit de corps* was very thinly disguised," Dunning thought, and, of course, it failed. Dunning believed that, since only three of the eleven articles of impeachment were voted on, the question of the President's power was never completely determined, but that the result, so far as it went, secured his position. And Dunning was satisfied with that result.[3]

In 1896 came a volume by a participant which is mentioned here only because it was the first book devoted entirely to the impeachment and trial. Edmund G. Ross, who as a senator from Kansas had cast a crucial vote for acquittal in 1868, wrote this curious, little volume at which modern scholarly reviewers might ungenerously hurl the epithet "non-book." Largely a collage of excerpts from the printed trial proceedings, it spared its contemporary readers the dreariness of the complete record, but for the historian's purposes it suffers from too many long documentary extracts and not enough Ross. Its lean measure of interpretation favored Johnson, thus showing that the author had not changed his mind after thirty years. Ross concluded emphatically that the prosecution was "partisan" but offered little insight into his own motives for voting not guilty. Like Dunning, he detected an institutional threat to the executive branch and expressed his fear that conviction would have set a harmful precedent.[4]

John W. Burgess, a colleague of Dunning's at Columbia University, found the Radicals' basic purpose—to secure civil rights for black men—"entirely praiseworthy," but was convinced that suddenly making voters of poorly prepared former slaves was an ill-chosen means of accomplishing it. From America's imperialistic dabblings, said Burgess, the country was realizing that "there are vast differences in political capacity between the races, and that it is the white man's mission, his duty and his right, to hold the reins of political power in his own hands for the civilization of the world and the welfare of man-

[1] William A. Dunning, "The Impeachment and Trial of President Johnson," *Papers of the American Historical Association*, IV (Oct. 1890), 145-177. This article was reprinted in Dunning's *Essays on the Civil War and Reconstruction* (New York, 1897; repr. 1965), pp. 253-303.

[2] Dunning, *Essays*, p. 261.

[3] *Ibid.*, pp. 290-291, 303.

[4] Edmund G. Ross, *History of the Impeachment of Andrew Johnson* (Santa Fe, 1896), pp. 155-173.

kind."[5] Impeachment was an attempt to dispose of not only the President but also the presidency. Burgess cheered the outcome, yet he criticized both sides in the dispute. He completely absolved Johnson from impeachable offenses, but had mixed feelings about his personal qualities. He thought the President "low-born and low-bred, violent in temper, obstinate, coarse, vindictive, and lacking in the sense of propriety"; but in patriotism and fidelity to the nation, Johnson was a giant and his accusers "pygmies."[6] Because of the obviously unbridgeable chasm between Johnson and his War Minister, Burgess charged the Senate with acting "most inconsiderately, not to say wrongfully," in refusing to concur in Stanton's suspension. "They claimed the welfare of the country demanded it [Stanton's reinstatement], and most of them probably thought so, but everybody can see the fallacy of that now, and anybody fit to be a Senator of the United States ought to have been able to see it then."[7] By Burgess' standards, at least thirty-six of the fifty-four men were unfit.

Immediately following Burgess' work came the most exhaustive history of impeachment ever written. Its author was David Miller DeWitt, a lawyer, schoolmaster, and Democratic legislator, whose two other historical works concerned the trial of Lincoln's assassins. His six hundred pages of factual details and lucid analysis of issues, major and minor, written in an elegant, if sonorous, style which might be a bit ornate for some modern tastes, have seemingly dissuaded others from a comprehensive restudying of the subject. Although DeWitt, like most of his contemporaries, was critical of the Radicals, he did not excuse the President's shortcomings. In discussing the undignified stump speeches of Johnson's 1866 campaign tour, which figured prominently in the equally undignified tirades of the Managers during the trial, DeWitt complained that the President's indecorousness had been "unfairly blazoned" before the country. But he also suggested—and modern writers tend to agree—that it would have been to Johnson's advantage had he stayed home.[8]

DeWitt thought the "rugged defiance" in the President's Washington's Birthday speech of 1866 led the Radicals "to plot the purging of the Senate and his impeachment and removal." Thus the Senate's ejecting of New Jersey Democrat John P. Stockton in 1866 by knavish parliamentary perfidy was an effort to eliminate a sure presidential supporter. The attempt to ram through both houses bills to admit

[5] John W. Burgess, *Reconstruction and the Constitution, 1866-1876* (New York, 1902), pp. vii-ix.
[6] *Ibid.*, pp. 157, 191-192, 194. [7] *Ibid.*, pp. 163-164.
[8] David Miller DeWitt, *The Impeachment and Trial of Andrew Johnson* (New York, 1903), p. 124; reprinted in 1967 by the State Historical Society of Wisconsin with a brief introduction by Stanley Kutler.

Nebraska and Colorado was similarly aimed at securing the requisite two-thirds for conviction. Arch-Radical Benjamin F. Wade became president pro-tem of the Senate to ensure the right kind of White House tenant after Johnson's ouster. And the law tampering with the dates of congressional sessions, by which the Thirty-ninth Congress in effect called the Fortieth into special session, was to make certain that a House of Representatives would always be on hand to impeach.[9]

DeWitt was most aghast at the legal legerdemain of the Managers, and at the unabashedly partisan meanness of many senators who had sworn to do impartial justice. Although the trial generally deserved "the everlasting condemnation of all fair-minded men," DeWitt considered the outcome of the "humiliating fiasco" most fortunate. The precedent set by Johnson's removal would have been "a perpetual menace to the stability of our executive, a spreading blight upon our character and credit as a nation, [and] a standing reproach to the republican form of government," and would gradually have led to "a national habit of political convulsions."[10]

One other prominent turn-of-century historian deserves consideration here. James Ford Rhodes was a college dropout who subsequently accumulated a dozen honorary doctorates. After making a fortune in the midwestern iron and steel industry, he retired at the age of thirty-six to the comforts of upper-middle-class Cambridge. Writing history was his hobby and his works have endured longer than those of many scholars with more orthodox backgrounds. The first volume of his magisterial seven-volume coverage of the period 1850-1877 appeared in 1893, and by 1906 Rhodes had written his way to the end of the war. He was somewhat skeptical of Radical programs and principles, and criticized Johnson (who received more censure than any other major figure) for tactical blunders. Particularly inept was Johnson's dismissal of War Secretary Edwin M. Stanton in a way that triggered passage of the impeachment resolution. Sixty-seven House Republicans who had opposed impeachment in December 1867 favored it two months later, a shift which Rhodes called "significant enough of the folly of Johnson's action." These Republicans, Rhodes thought, regarded the eviction of Stanton as the climax of two years of resistance to congressional reconstruction.[11] He believed that since the House Managers had not proved their charges, the Senate gave the right verdict—but he added: "The general agreement in this state-

[9] *Ibid.*, pp. 54, 66-86, 91, 149, 174-177. [10] *Ibid.*, pp. 549, 578-579.
[11] James Ford Rhodes, *History of the United States from the Compromise of 1850 to the Final Restoration of Home Rule at the South in 1877* (New York, 1906), VI, 114-115.

ment has caused many to overlook the *fact* that there was 'probable cause' for impeachment and that it was a case about which honest men might differ."[12] Logic somehow balks at this, for if honest men could differ about the case (and they still do), then perhaps the existence of "probable cause" was not so clear a "fact" after all.

Several historians of the late twenties concentrated primarily on Andrew Johnson. A classic work in this group was Lloyd P. Stryker's portrayal of Johnson as "a study in courage," which he opened by announcing that "justice" for Johnson was long overdue. He scored earlier writers for stirring "the old embers of hate and in the form of 'history' [giving] us little better than a digest of contemporary calumnies." Stryker thought historians feared to tell the true story of reconstruction because to do so would require portraying the Radicals as guilty of the "meanest crimes" and Johnson as "one of the most unjustly treated characters in America."[13] Without going into any reasons for such intellectual dishonesty on the part of professionals, the amateur Stryker merely resolved not to shrink from the task of doing "justice," even though it required a volume of nearly nine hundred pages. Even the self-imposed labor of thinking up eighty-nine chapter titles was surmounted with such gems as "Impeachment is Dead! Long Live Impeachment!" In Stryker's very detailed factual narrative, authorial interpretation and judgment were brought to bear on individuals rather than on theoretical questions like separation of powers. The full force of his barbed prose, liberally studded with exclamation points, fell on the Radicals. In drafting the articles of impeachment "a shaggy mountain of malice had panted, heaved and labored, and this small and very scaly mouse was the result!" The debate on the impeachment resolution in February 1868 "resembled the low brawlings of some riverfront resort where argument is given point by flying cuspidors and broken chair rungs." At the Managers' table during the trial, "like some cold-bellied snake with poison-fangs fitfully darting, was old Thaddeus Stevens, with the eyes and visage of Apollyon!"[14] If to Stryker the Radicals personified evil, Johnson personified virtue. Stryker did accuse the President of committing "an almost incredible blunder" in keeping Stanton on as long as he did, but he found a cause for it: Johnson, destitute of duplicity, could not imagine it in others.[15] Though Stryker had set out to do justice to Johnson, he ill succeeded. Complete exoneration does not answer, any more than thorough castigation.

[12] *Ibid.*, pp. 154-155. Emphasis added.
[13] Lloyd P. Stryker, *Andrew Johnson: A Study in Courage* (New York, 1929), pp. vii-viii.
[14] *Ibid.*, pp. 575, 583, 592.
[15] *Ibid.*, p. 422.

A contemporary of Stryker was Claude G. Bowers. "The Tragic Era," he called the twelve post-war years, and the tragedy lay in the revolutionary doings of the Radicals—those "rugged conspirators" whose policies tortured the South, bent the Constitution out of shape, and nearly wrecked both Presidency and Supreme Court. Bowers called impeachment "The Great American Farce." He made full use of all suitably theatrical episodes during the trial and gave others a melodramatic aura they probably never possessed, as when he depicted "big, husky politicians with glowering faces" terrorizing a poor little sculptress to make sure the senator who boarded at her house would vote to convict. Some of the audience at the premiere performance of "The Great American Farce," and some of the actors, learned appropriate lessons in political morality; Bowers hoped that his and later generations would learn the same lessons from his book.[16]

Besides Stryker and Bowers, the quintet of prominent writers of the late twenties included George Fort Milton, Robert W. Winston, and Howard K. Beale. As a scholar and historical craftsman Beale easily outdistanced the others; but since he centered on the first two years of Reconstruction, impeachment received only indirect treatment. He believed, however, that Johnson had been the undeserving victim of extremists in the Republican party. Milton's work was a general history of Reconstruction, filled with factual detail and well garnished with anecdotes at the expense of the Radicals. Winston's is still the most balanced and judicious biography of Johnson. The President appears as the victim of Republican wiles—more so, perhaps, than he really was—and thus the overall view is favorable to Johnson. Impeachment was an undeserved attack which fortunately miscarried. Yet Winston's tone is less Olympian than Stryker's, and his presentation of the postwar years less like a villain-ridden Cecil B. DeMille scenario than Bowers'. Winston is also superior to Milton in that the President as an individual is not so deeply buried in a narrative morass.[17]

In 1935 W. E. B. Du Bois published what was until a few years ago the most noteworthy history of reconstruction by a Negro scholar. Sharply critical of Johnson, he regarded the President as an obstructionist bent on frustrating the will of the "overwhelming majority" of northern voters as mirrored in Republican policy. Clearly, Du Bois preferred "party government" to the existing system, so that a President would have to be "at least in general accord with his party. His

[16] Claude G. Bowers, *The Tragic Era* (Boston, 1929), pp. v-vii, 194, 197, 220.
[17] Howard K. Beale, *The Critical Year* (New York, 1930), pp. 213-214, 403-405; George Fort Milton, *The Age of Hate* (New York, 1930), pp. 486-632; Robert W. Winston, *Andrew Johnson, Plebian and Patriot* (New York, 1928).

utmost power should not go beyond a suspensory veto compelling a plebiscite. . . . but the antiquated constitutional requirements of a system of laws built for another age and for entirely different circumstances were now being applied to unforeseen conditions." Du Bois concluded, "the failure legally to convict Johnson has remained to frustrate responsible government in the United States ever since."[18] Du Bois' contention is easily dealt with. For one thing, it is most curious to censure Johnson for not obeying party mandates when the party itself was repudiated in at least eight northern states in the autumn elections of 1867. For another, it is highly debatable whether Johnson's acquittal frustrated the country's political development; indeed, we seem to have managed quite neatly under our familiar system with an unshackled executive. And as to the idea that the Constitution was "antiquated" then, one need only point out that no amendment altering the internal structure of the federal government resulted. Or, if one prefers, there is the point that lots of Billy Yanks who risked their lives for the Constitution did not think it at all "antiquated."

Following Du Bois by two years came James G. Randall with one of the most utilitarian, readable, and influential volumes in Middle Period historiography, *The Civil War and Reconstruction*, which was considerably revised and updated by David Donald for a 1961 edition. Randall was without question one of the leading American historians of the last quarter century, and his textbook has guided many a college undergraduate through a Civil War course. Donald attested to the soundness of Randall's treatment of impeachment by allowing the relevant chapter to stand with only the most minor of alterations. Randall chastised the Radicals—or the "Vindictives", if one prefers to restore his favorite and perhaps more descriptive label—for their reconstruction program in general and for impeachment in particular. The impeachers' frontal assault on the governmental structure "was of a piece with the rest of the Radical program" and exemplified a want of the proper "judicial attitude" in both House and Senate. If the architects of our system had supposed that the President ought to be politically responsible to Congress they would have made his position comparable to that of British prime ministers; if later generations liked the idea they should effect it by constitutional amendment and not by "degrading" the impeachment concept for partisan ends. Accepted procedure went by the boards in 1868; without bothering to conduct a specific preliminary investigation the House passed a resolution of impeachment and left the supporting articles, which were the obvious prerequisite for the resolution in the first place, to be figured out

[18] W. E. B. DuBois, *Black Reconstruction* (New York, 1935), pp. 343-344.

later. In Randall's view Johnson was correctly acquitted and the system satisfactorily vindicated.[19]

Reconstruction studies continued, if somewhat fitfully, during the forties and fifties, but in most works of this vintage impeachment was a peripheral subject. The writings of the present decade are far more important; indeed, we have been getting a deeper rethinking of reconstruction in the last eight years than at most times since the pioneer works of a half century past. The recent trend has seen the Radicals' stock going up and the President's necessarily dropping. The Radicals, although still keeping a little tinge of their formerly celebrated political immorality, opportunism, and crassness, are now turning out to be more sincere and principled than heretofore imagined. Too, they were apparently endowed with more principle—or at least more of principles judged to be commendable—than the President. The long list of episodes and conditions once adduced against them has been shortened by intensive rummaging in manuscript collections, by reinterpretation, and perhaps by the effect, whether consciously or unconsciously applied, of present racial unrest.

In spite of all the perceptive work done during the past few years, however, impeachment is one of the few reconstruction episodes which has not been reinterpreted in favor of the Radicals. Some have tried, but without much success, really. The vanguard year was 1960, when Eric L. McKitrick liberally applied concepts from the behavioral sciences to Johnson's presidential actions. He suggested that after Congress assumed control, the President "apparently had no measurable influence" over reconstruction and that "for almost any practical purpose, the presidency as an effective and positive force in the nation's affairs ceased to exist."[20] Impeachment, then, was really unnecessary—even more, it was a politically risky business for the Republicans. If during the trial public opinion championed the presidential office (Johnson was too unsavory a character to garner personal support) the Republicans might lose political control of the North. Such a calamity would in turn render useless the southern political edifices they were erecting on the foundation of Negro votes. So impeachment, not having had rational causes, must perforce have had irrational ones: if it were "simply thought of as a towering act of abandoned wrath, wholly detached from 'reason,' it would be surprising to discover how little else was required in the way of explanation." One must next inquire what could have brought about such "unwholesome

[19] James G. Randall and David Donald, *The Civil War and Reconstruction* (Boston, 1961), pp. 601, 605-607, 616-617.

[20] Eric L. McKitrick, *Andrew Johnson and Reconstruction* (Chicago, 1960), p. 486.

madness." McKitrick isolated two causes for passage of the impeachment resolution. First, Johnson's own initiative, manifested in a long series of "provocative" acts between June 1867 and February 1868 which included "much premeditated spite over his curtailed prerogatives;" second, a feeling of great confidence after his removal of Stanton on February 21, 1868, that conviction would be mere child's play.[21]

Now such an interpretation presents some knotty problems. For one thing, these two causes do not explain the year-long clamor for impeachment prior to June 1867. For another, supposed "spite" over curtailed prerogatives is not necessarily a criticism of Johnson or a justification for impeachment. His presidential prerogatives *were* curtailed, sometimes in ways that could without difficulty be found constitutionally wanting, and Johnson, a reverent constitutionalist of long standing, doubtless took seriously his oath to "protect and defend" that document. Johnson's "provocations" require comment as well. He could certainly have been far more provocative than he was—by immediately appointing reactionary generals, instead of Radicals like Sheridan and Pope, to all five southern commands; by urging the Supreme Court to enjoin execution of the Reconstruction Acts, instead of authorizing the Attorney General to urge the negative; by flatly refusing to execute the laws at all; or by ejecting Stanton the day before the Tenure Act became law. Moreover, irritating though some of his actions were, they hardly fall into the constitutionally prescribed categories of "high crimes and misdemeanors." Where was the crime in vetoing a law? Or in telling Congress, as had its own members, that it was passing unconstitutional legislation? Or in shifting military commanders? Or in asking the Attorney General to interpret laws? In fact, the investigation launched in the summer of 1867 with a view to impeachment generally ignored all these "provocations" and concentrated instead on discovering additional bits of irrelevancy concerning Johnson's supposed part in the murder of Lincoln. And at the trial, the Managers stressed only "provocative" acts that were directly concerned with the removal of Stanton on February 21. McKitrick emphasized that in June 1867 Johnson promulgated for the Army's guidance an interpretation of the Reconstruction Acts which construed them more narrowly than Congress intended and circumscribed the authority of military commanders under them. One must remember, however (McKitrick apparently did not) that Army commanders themselves specifically requested, and that the statutes badly needed, the Attorney General's interpretation. It was no fault of Johnson's that the solons' draftsmanship was slipshod.[22] Finally, McKitrick regarded

[21] *Ibid.*, pp. 488-490.

[22] Some of these points are more fully developed in James E. Sefton, *The United States Army and Reconstruction, 1865-1877* (Baton Rouge, 1967), ch. 5-7.

the "overtones" left in historiography by the affair as "those of unworthiness, which is just as well," but he added that these were not the dominant overtones in 1868. "It is right that history's account should be made up more from the aftermath and afterthoughts than from the causes; but it is also well to observe that this is primarily because the impeachment failed. Had it succeeded, we may be very sure that the echoes of the affair would have been, if still not exactly sweet, at least very different."[23] Very sure? One wonders. If for instance impeachment had succeeded and the ruination of the Republican party had followed (as McKitrick himself suggested), might not this also have left overtones of "unworthiness"?

In John Hope Franklin's brief but important synthesis only five pages were devoted to impeachment, and while Franklin in general was sympathetic to Republican policy his impeachment narrative conveyed no strong feelings for either side. Whereas Franklin was brief, Milton Lomask went to the other extreme in a popularized account, well written and packed with detail but of little consequence either in facts or interpretations.[24]

In 1962 Benjamin P. Thomas and Harold M. Hyman published a new biography of Edwin M. Stanton, impeachment's bone of contention. They viewed impeachment as a conservative force in that Johnson was finally "frightened" away from his earlier efforts to dominate reconstruction. A kind of "stability" became possible in Washington; the new Secretary of War was simply a "glorified clerk," Grant controlled the Army, and Johnson quietly served out his term without further attempts to meddle in reconstruction affairs.[25] But how "frightened" was Johnson, really? He vetoed bills to readmit eight states in June 1868; he issued two more amnesty proclamations; he appointed arch-Democrat Lovell H. Rousseau to the Louisiana command. Further, how much interference was even called for after impeachment? The readmission of eight states during the summer automatically reduced very considerably the federal government's power and functions in those areas. Finally, to view such an attack as a "conservative" thing requires one to believe that Radical wrath was

[23] McKitrick, *Johnson*, pp. 490-491.

[24] John Hope Franklin, *Reconstruction: After the Civil War* (Chicago, 1961), pp. 74-79; Milton Lomask, *Andrew Johnson, President on Trial* (New York, 1960).

[25] Benjamin P. Thomas and Harold M. Hyman, *Stanton: The Life and Times of Lincoln's Secretary of War* (New York, 1962), pp. 612. See also Hyman, "Johnson, Stanton, and Grant: A Reconsideration of the Army's Role in the Events Leading to Impeachment," *Amer. Hist. Rev.*, LXVI (Oct. 1960), 85-100.

directed only against Johnson as an individual and not also against the Presidency as an institution. A difficult proposition, this, since some of the leading Radicals—Wade is a good example—were firm believers in legislative supremacy.

Quite naturally, British scholars might be expected to see in the parliamentary system a cure for clashes within our federal government. W. R. Brock studied the workings of Congress and concluded that the nation had come by 1868 to the very brink of a major constitutional revolution—"the instruments [for Anglicizing the federal government] were at hand though the principle was rejected." The rejection, of course, came in the failure of impeachment, which "proved the deathblow to the emergent notion of legislative supremacy."[26] McKitrick, it will be remembered, had seen impeachment as a politically perilous course for the Republicans to chart, and Brock agreed. The Briton, however, was rather more decided than his American colleague in criticising impeachment as "a political error of some magnitude. . . . It belongs indeed to that class of gambles in which revolutionary movements characteristically overplay their hands."[27]

The two most recent surveys of reconstruction, by Kenneth M. Stampp and Rembert W. Patrick, each briefly discuss impeachment. Because Stampp followed McKitrick on the question of causation, ascribing impeachment in part to "the passions of the hour" and in part to Johnson's "extremely provocative behavior," his interpretation suffers from the same deficiencies. In defending the Radicals Stampp pointed out that they had to grapple with the particularly knotty problem of hostility between Congress and President. "For this," he suggested, "there is only one legal remedy, and that is for the President to resign voluntarily"—which if pursued would obviously give Congress every victory. The measure of Stampp's tendency to play down the potentially mischievous long range consequences of conviction was his suggestion that "Johnson's removal would more likely have been a curiosity of American political history than a precedent for future action."[28] Patrick found impeachment "a towering act of vindictiveness against a President who by infuriating his opponents had made them abandon reason to strike back at him." He also doubted the certainty of the earliest writers that conviction would have been an irrevocable evil for the future development of the country.[29] In general, then, the most recent writer on reconstruction agreed

[26] W. R. Brock, *An American Crisis: Congress and Reconstruction, 1865-1867* (New York, 1963), pp. 259, 262.
[27] *Ibid.*, p. 277.
[28] Kenneth Stampp, *The Era of Reconstruction, 1865-1877* (New York, 1965), pp. 148-154.
[29] Rembert Patrick, *The Reconstruction of the Nation* (New York, 1967), pp. 119-120, 131-132.

with significant points in the present interpretation of impeachment.

It is impossible here to treat everyone who has dealt with impeachment, but those considered above, and a few others who will shortly be cited on specific matters, are the most important names on the long list. After considering the extensiveness of their writing—the total output would approach 3500 pages—one might be tempted to throw up one's hands in dismay and inquire whether some of those historians might not have better invested their time and energy in other topics. After all, surely there must be *some* aspects of impeachment on which *all* historians agree. "All" historians agree on relatively few things—thus preventing the profession from becoming either dull or underpopulated—but impeachment does involve a few topics on which, if opinion is not unanimous, at least the majority seems to have shouted down the few sporadic dissenters. These aspects of impeachment will now be narrated and the bases of historians' agreement explained.

The first point of concurrence is that the idea of impeachment began, at least on the part of some Radicals like Wendell Phillips and Ben Butler, in 1866.[30] These extremists, of course, were for a time ahead of majority sentiment among congressional Republicans, and the party required until February 1868 to work itself up to the necessary peak of fury. General agreement also surrounds the so-called "first impeachment" effort. The Judiciary Committee of the House busied itself during the first six months of 1867 with this "grotesque and clownish business not unlike that of Joseph McCarthy and his 57 Communists."[31] Without doubt this movement, the first formal House inquiry into Johnson's conduct, was precipitated by the President's veto on January 7 of a bill allowing black men to vote in the District of Columbia.[32] The driving force behind the project was Congressman James M. Ashley, easily one of the most bizarre figures in postwar congresses. In appearance and demeanor a rather smallish replica of Falstaff, Ashley in temperament and habits suggests a large measure of Bardolph with a bit of Iago to boot. At various times in his crazy-quilt record of past enterprises he had studied (but never practiced) medicine and practiced (but apparently never studied) pharmacy. This may help to account for his singular theory of presidential deaths in office: Harrison and Taylor had been poisoned, Buchanan nearly

[30] Bowers, *Tragic Era*, p. 143; DeWitt, *Impeachment*, pp. 54, 128, 135; Dunning, *Essays*, p. 260; Richard S. West, Jr., *Lincoln's Scapegoat General: A Life of Benjamin F. Butler, 1819-1893* (Boston, 1965), pp. 323-327; Beale, *Critical Year*, p. 213; McKitrick, *Johnson*, p. 487.
[31] McKitrick, *Johnson*, p. 492.
[32] *Ibid.*, p. 491; Franklin, *Reconstruction*, pp. 74-75; DeWitt, *Impeachment*, pp. 150-153; Stryker, *Johnson*, pp. 418-419.

so, and Lincoln shot, all for the express purpose of promoting the vice-presidents. In his pathetic semi-dementia Ashley thus conjured up the horrid spectre of Andrew Johnson, Murderer, and spared no effort to convince the Judiciary Committee that it was real. He found eager coworkers in Congressmen Butler and George S. Boutwell, the latter a stately-visaged fuss-budget with an imagination as ludicrously fanciful as any in the Thirty-ninth Congress. The Vindictives went at their task with a will, listening seriously to the wildest hearsay, rummaging about in the President's private financial accounts, consorting with felons, and even suborning perjury in their lust to find or manufacture evidence of complicity in the assassination—or of any lesser but sufficiently impeachable offense, for all that. At length the more rational members of the committee tired of such foolery and reported that no presidential crime could be found. Historians generally agree that the project was an ignominious failure, and a deserved one withal. Indeed, it may well be that the recurrence of such unsavory episodes throughout the impeachment epic has helped materially in preventing a fully successful pro-Radical reinterpretation.

Between July and December 1867 the Radicals tried again. This new effort has generally been recognized as a continuation of the first project, in that the Judiciary Committee merely carried on its earlier inquiries; an extra *ad hoc* group, indicatively dubbed the "Assassination Committee" and created so that Ben Butler might freely exercise his muckraking skill, ran its own investigation but never submitted a report. Although this second effort got a step beyond the first—an impeachment resolution at least came to a vote in the House before being crushed by a two to one tally—the Radicals failed again for the same reason they had failed before. The President simply had not committed an impeachable offense.[33]

In early January, 1868 the impeachers gave the project a third go. In August, 1867, while the Senate was out of session, the President had suspended Stanton and appointed General Grant as *ad interim* War Secretary. In December, the Senate having reconvened, Johnson officially reported his action and the reasons for it. On January 13 the Senate refused to concur in the suspension; Grant vacated the troublesome premises, and Stanton tramped back in. By acquiescing in the Senate's action Grant took Johnson by surprise, for the President supposed that Grant had promised him not to yield. This misunderstanding led to a lengthy public exchange of correspondence between Johnson and Grant. Whichever disputant may have had the better

[33] McKitrick, *Johnson*, pp. 494-499; DeWitt, *Impeachment*, pp. 288-314; Dunning, *Essays*, pp. 257-260; Milton, *Age of Hate*, pp. 401-425.

case (and there is disagreement here), the Reconstruction Committee of the House at first saw in the correspondence proof of an abortive conspiracy to violate the Tenure Act. One circumstance soon weakened their eagerness to strike. It takes two to conspire, and any attack on the President would necessarily tarnish Grant. That would never do, even to get rid of Johnson, for Grant was being groomed as the next Republican presidential nominee. So the Reconstruction Committee tabled, 6-3, an impeachment resolution, and no historian has seriously doubted that Grant's status killed this third attempt.[34]

During February, 1868, events moved rapidly. On the twenty-first Johnson removed Stanton (the previous time he had "suspended" him) and appointed the Adjutant General of the Army, Lorenzo Thomas, to act in his place. Stanton clung to his chambers and on the twenty-fourth the House passed a resolution of impeachment by the strict party vote of 126-47. The resolution charged Johnson with "high crimes and misdemeanors" as yet unspecified, although everyone knew that the orders of February 21 constituted the particular offense and that the Tenure Act made violation of its provisions a "high misdemeanor." Clearly, many hesitant Republicans had suddenly found what their consciences required.[35] It is certain that the removal of Stanton brought on the impeachment resolution, and that, in Lorenzo Thomas, Johnson had cast a dignified dunce in a role requiring a nimble-witted stalwart. The well-meaning Thomas was just not equipped to cope with the wily War Minister. At a masquerade ball on the night of the twenty-first he bragged about how easily he would dispossess Stanton; at a reception he glowed with pride when told by a well-wisher, "The eyes of all Delaware are on you!" But when at the supreme moment he faced the Secretary and attempted to eject him, he could not pull it off. The fierce little man had cowed stauncher specimens than Thomas, and the convivial general proved an easy mark for soothing conversation and offers of liquid refreshment.[36]

The Radicals passed the impeachment resolution before drafting the articles, or specific allegations, for which backwardness James G. Randall criticized them; and other historians have at least silently acquiesced in his judgment. The articles were so syntactically tortuous that the mind reels at the task of the lawyer who would make sense of them. Although other specifications were worked in, the events of February 21 received greatest prominence, and the compli-

[34] McKitrick, *Johnson*, pp. 499-504; DeWitt, *Impeachment*, pp. 335-336.
[35] Dunning, *Essays*, pp. 258-271; DeWitt, *Impeachment*, pp. 339-374; Randall and Donald, *Civil War and Reconstruction*, p. 605.
[36] DeWitt, *Impeachment*, pp. 344-356; McKitrick, *Johnson*, pp. 504-505; Milton, *Age of Hate*, pp. 502-508.

cated phraseology, particularly of the eleventh article, was doubtless meant to entrap wavering senators.[37]

Certain aspects of the trial itself would command extensive agreement among historians. Chief Justice Chase, who presided honestly if not always successfully attempted to make the Senate behave like a court rather than an ordinary legislative body. On questions of disputed evidence those senators who sought to be fair were often outvoted; and the exclusion of defense testimony concerning Johnson's intent (which after all was central to the case) hardly does the chamber credit. In fact, as DeWitt noted, the exclusion of evidence helped secure acquittal by aligning some of the wavering Republicans, like Missouri's John Henderson, with the defense.[38] Certainly Johnson's counsel—among them a former justice of the Supreme Court as well as one former and one future Attorney General—were much better lawyers than any of the Managers. Against them were pitted the likes of George Boutwell, who so far took leave of his senses as to suggest that upon conviction Johnson should be hurled into a particular "vacant region" of the skies where the Creator had omitted to place any celestial bodies. William M. Evarts, to the glee of all save one, retorted that since Boutwell alone knew the precise location, he would have to strap the prisoner to his back, climb to the dome of the Capitol, and soar heavenward with his burden to ensure execution of the sentence. The leading Manager was Butler, of whose opening forensic effort *The Nation* observed, "As a legal argument, it scarcely rises above the level of the pettifogger's balderdash."[39] Butler's favorite tactic was a boisterous partisan tirade, delivered in a voice like "the commingled screeching of a hundred circular saws and the rumbling of one gun carriage on a bad pavement."[40] With that reverberating off the Senate's paneled walls, it is little wonder some members wearied of the trial. Most historians would concur that in the battles between the Managers' partisan bombast and the defense counsel's cold logic and legal reasoning, the defense was usually the real winner, senatorial votes notwithstanding.[41]

[37] Randall and Donald, *Civil War and Reconstruction,* pp. 605-608; Stampp, *Reconstruction,* p. 150; Milton, *Age of Hate,* pp. 519-520; DeWitt, *Impeachment,* pp. 386-387.

[38] M. Kathleen Perdue, "Salmon P. Chase and the Impeachment Trial of Andrew Johnson," *The Historian,* XXVII (Nov., 1964), 75-92; Bowers, *Tragic Era,* pp. 182-187; Patrick, *Reconstruction,* p. 127; Ross, *Impeachment,* pp. 105-126; DeWitt, *Impeachment,* pp. 438-447.

[39] Quoted in Chester Barrows, *William M. Evarts* (Chapel Hill, 1941), p. 146.

[40] Quoted in Bowers, *Tragic Era,* p. 184. West, *Butler,* pp. 323-327, defends Butler by holding that even if some of his antics might have been outrageous, the retorts of the defense were just as bad (which they were).

[41] The idea of one writer that Curtis "made what was generally considered the best of a bad case" is an uncommon one, and questionable at that. Ralph Korngold, *Thaddeus Stevens: A Being Darkly Wise and Rudely Great* (New York, 1955), p. 422. Contrarily, Curtis "met, considered, and demolished the arguments of the impeachers as a stone crusher grinds a jagged boulder to fine powder." Stryker, *Johnson,* p. 647.

Johnson comported himself with great dignity and calmness during the trial, although Woodrow Wilson would have had us believe that he went rampaging about the country arraigning his enemies in his inimitable Tennessee style.[42] Wilson was alone in making the contention, however, and there is no evidence that Johnson was out of the city at all during the trial, unless for brief outings to nearby Maryland.

Historians have not excused the schemes conocted by the Managers and Senate Radicals to ensure conviction. The articles were voted on in scrambled order, and some not at all.[43] Before and during the trial Stevens urged the readmission of Alabama and Arkansas in such haste that it was obvious the senatorial seats were the desired prizes. The impeachers exerted great pressure upon vacillating Republicans. Bribes were dangled in front of some; others were threatened with charges of accepting bribes from the opposition; and one, deeply religious, was beset by the adjurations of Methodist bishops. Finally, it may be regarded as settled that the seven Republicans who voted for acquittal suffered a torrent of abuse at the time, although the duration of this ill-will and its effect on their later careers are yet disputed.[44] The foregoing, then, are examples of some areas of the impeachment in which a particular account or interpretation has stood without serious challenge.

What, now, of other points, some equally and some more important, over which writers have clashed? The opposing viewpoints as to causation reflect a more basic schism among reconstruction scholars. The concept of impeachment as the malevolent persecution of a defenseless, unoffending President who merely sought to protect the Constitution and the nation against Radicalism run wild, fits together with an anti-Radical depiction of the period as a whole. Evaluations of the postwar years which find more in the Radical program to commend are more likely to see Johnson as a wrong-headed, inept and truculent

[42] Woodrow Wilson, *Division and Reunion, 1829-1889* (New York, 1893; rev. ed., 1926), pp. 284-285.

[43] DeWitt, *Impeachment,* pp. 549-550, 554; Randall and Donald, *Civil War and Reconstruction,* pp. 612-613; Ross, *Impeachment,* pp. 129-133.

[44] Richard Current, *Old Thad Stevens: A Story of Ambition* (Madison, 1942), pp. 304, 307-308; DeWitt, *Impeachment,* p. 518; Bowers, *Tragic Era,* pp. 191-195; Ross, *Impeachment,* pp. 141-142; Stryker, *Johnson,* pp. 709-719. Franklin, *Reconstruction,* p. 78, greatly understates the facts in saying that "perhaps" pressure was exerted on the uncertain Republicans.

failure who alienated "moderate" politicians and brought impeachment down on himself.[45] A middle ground seems attractive. No plan of reconstruction was free of defects, and it requires no arduous searching to discover major ones in the ideas of both Johnson and his antagonists. This fact once recognized, the Radicals can still be blamed for a short-sighted fixation, partially about idealism and partially about punitive measures; Johnson for a lack of political sagacity arising largely from his background, experience, and natural traits. "Causation" of impeachment is thus shared much more equally by both sides, and the affair becomes more understandable if no more warranted.

Causation is intricately connected with motive, and in a sense analysis of the causation of impeachment is also a group analysis of the impeachers. Certain individuals present difficulties, however. How explain the venom of Thaddeus Stevens, for example? Fawn Brodie observed that Stevens came to the Fortieth Congress driven by two "ravaging ambitions"—one to break Andrew Johnson and the other to thoroughly overhaul southern society. In Brodie's sympathetic evaluation these ambitions would not necessarily evoke criticism; Richard Current, on the other hand, was harsh on the Pennsylvania Radical. Brodie saw psychological factors at work in that Johnson's name-calling could have reopened old wounds. Current, however, pointed out that Johnson's removal would transfer the real leadership of the country to the man who could command a majority in the House, and thus impeachment could have made Stevens prime minister of the United States "in fact if not in name."[46] Whoever might have been prime minister, Senate president pro tem Benjamin Wade would have become President upon Johnson's removal. The most frequent evaluation of Wade is that his every action, from his election as president pro tem to his vote against Johnson at the close of the trial, betrayed his desperate longing for the post. Whatever the motives, some of Wade's doings were remarkable, to say the least. For example, his effort to repass the vetoed Colorado statehood bill without warning in the middle of a midnight debate on an internal revenue measure obviously capitalized on the absence of the bill's opponents. Senator James R. Doolittle, one of the Administration Republicans, beat down the attempt for a vote until the following morning when, reinforcements having arrived, the Radical project was overborne with ten votes to spare. Here, said DeWitt, was the "high-water mark of impeachment." He was convinced that if Colorado had been admitted

[45] Compare, for example, Dunning, DeWitt, Stryker, Bowers, Randall, and Lomask with McKitrick, Thomas and Hyman, and Stampp.

[46] Fawn Brodie, *Thaddeus Stevens: Scourge of the South* (New York, 1959), pp. 296, 350; Current, *Stevens*, pp. 295-296.

that night, "then in all human probability" Johnson would have been ousted and Wade put in.[47] But to Hans L. Trefousse, Wade wanted Nebraska and Colorado because their votes were essential in the legislative war with the President—"Impeachment was merely incidental."[48] There is something odd in this. The nocturnal Colorado affair took place on February 28, 1867, by which time Radical forces already surpassed two-thirds. Most legislation could thus be gotten through in spite of Johnson, as had already been proved. Securing two-thirds of the Senate for conviction was more touch-and-go. Since the Colorado votes had thus far not been required, and since the transparency of the whole proceeding was plain, Wade seems correctly chargeable with a gamble born of the most extreme intentions.

What of Wade's alleged impropriety in taking part in the trial and voting at its conclusion? Trefousse dismissed the matter of participation with the observation that it was no more reprehensible than that of Senator David T. Patterson of Tennessee—after all, *he* was Johnson's son-in-law. A clever argument only if morality is judged on a comparative scale. Trefousse also dismissed Wade's vote for conviction by noting that it did not make any difference; the roll proceeded alphabetically, and acquittal was ensured by Senator Peter Van-Winkle's vote.[49] So ineffectiveness in some way palliates infamy.

The motives of the seven acquitting Republicans have attracted much attention. Too much, perhaps, in the view of one historian: "Since the President was acquitted in 1868, a study of the reasons for the vote of individual senators is more academic than real."[50] No. Precisely the contrary. History, whatever else it may be, is the record of men making or failing to make decisions. Thus reasons and explanations for human actions are necessary if often elusive objects of the historian's quest. Many things could explain the seven votes—rigid adherence to the oath to do impartial justice; insufficient evidence; consideration of possible long-range effects; revulsion at the Managers' trial practices; horror at the thought of Ben Wade even a temporary sojourner in the Executive Mansion.[51] Often an interpretation stressing a pure or commendable motive gets linked up with a view of the results as politically disastrous to the seven "martyrs." Edmund G. Ross of Kansas is a favorite case—never reelected to the Senate,

[47] DeWitt, *Impeachment*, pp. 177-179.

[48] Hans L. Trefousse, *Benjamin Franklin Wade: Radical Republican from Ohio* (New York, 1963), p. 278.

[49] *Ibid.*, pp. 297, 303-304.

[50] Patrick, *Reconstruction*, p. 131.

[51] Trefousse, *Wade*, pp. 8, 305; Dunning, *Essays*, p. 300; Alfred H. Kelly and Winfred Harbison, *The American Constitution* (3rd ed., New York, 1963), p. 477; Mark M. Krug, *Lyman Trumbull, Conservative Radical* (New York, 1965), p. 268.

hounded out of politics, a man without influence or position. Some writers doubt such characterizations. Ralph J. Roske played down the failure of the seven to be reelected to the Senate because some of them continued to have informal influence in the party or occupied appointive posts, and because others died shortly anyway. As to Ross, Charles A. Jellison suggested that the Kansan was really a "political accident" who had gotten to the Senate in the first place only because the suicide of James H. Lane made a temporary substitute necessary. Ross might have thought that to convict would leave him an insignificant voice in the Radical crowd, whereas to acquit might give him a patronage lever with Johnson. In any case Ross did act with unseemly haste in asking favors from Johnson following the trial.[52]

Largely because of the Tenure Act's phraseological deficiencies, many constitutional questions arose at the trial. The law stipulated that Cabinet members should remain in office "for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate." The act also allowed the President, during a recess of the Senate, to "suspend" an official for cause until the next session. At that time the President was obliged to lay the case before the Senate for their action; a vote of non-concurrence in the suspension would restore the individual to his office.[53] These murky provisions led to the following problems: First, did the act clearly violate a provision of the Constitution? Second, if not, wherein did it run counter to the way the removal power had been interpreted and applied since 1789? Third, regardless of its constitutionality or of the Radicals' intentions, did the law actually protect Stanton? Fourth, did the President derive any power to remove or suspend from statutes other than the Tenure Act? Fifth, where a statute restricts the power of the Executive, can he, if he believes it unconstitutional, violate it as a means of obtaining judicial determination of its validity? Sixth, did Johnson, in any of the details of his suspension and removal of Stanton, in effect recognize the validity of the Tenure Act, thereby preventing himself from further challenging its constitutionality? Historians agree on some of the answers and disagree on others; but more important, these constitutional matters are often treated vaguely and unclearly, if at all. The contemporary arguments, especially of the

[52] Ralph J. Roske, "The Seven Martyrs?" *American Historical Review*, LXIV (1959), 323-330; Charles A. Jellison, "The Ross Impeachment Vote: A Need for Reappraisal," *Southwestern Social Science Quarterly*, XLI (Sept. 1960), 150-155. The more common view of Ross is given in Edward Bumgardner, *The Life of Edmund G. Ross, the Man Whose Vote Saved a President* (Kansas City, 1949). See also Krug, *Trumbull*, pp. 269-272.

[53] 14 U.S. Statutes at Large 430.

Managers, are somewhat less than crystalline, and this is doubtless part of the cause. Moreover, historians find the detailed and seemingly fussy points surrounding the Tenure Act less intriguing than the concept of impeachment as a political weapon, or than matters of political sagacity and statesmanship involved in Johnson's fight with Congress.

Historians usually lump the first two questions together and come to vague and indefinite conclusions as to the law's validity. In this, of course, they differ markedly from Johnson, his unanimous Cabinet, and some of the best congressional lawyers, who thought the act clearly unconstitutional.[54] In truth the law violated no specific provision of the Constitution because that document is silent on the removal power. From the provision on appointments as a point of departure one could argue in two diametrically opposite directions: either that because the appointment power is restricted, the removal power is by inference similarly restricted; or that the inclusion of specific restrictions on the appointment power but none on the removal power means that the latter was purposely intended to be exercised without impediment. The First Congress had debated the matter thoroughly, and until 1867 the second line of reasoning was the generally accepted one (the first requires a bit too much straining). Perhaps the best conclusion is that of Andrew C. McLaughlin, who opined that if in its formative years the federal government had not developed in the way it had, one could perhaps debate the constitutionality of the act or at least defend the theoretical right of the Senate to disallow removals. "But history, if not inexorable logic, was arrayed against Congress."[55]

Question three was probably the most important of all. If the act did not protect Stanton, then his removal was obviously no violation of it. Moreover, the question of the act's constitutionality, now devoid of practical significance, would retain only its abstract qualities.[56] Congressional verbosity at the time of passage did little to illumine the law's meaning. In the House a majority wanted Stanton protected and thought the final wording did so. In the Senate some thought it did, some thought it did not, some thought the matter too trivial to risk losing the whole bill, and at least one (John Sherman), to his later chagrin, thought the matter purely hypothetical since no Cabinet

[54] Milton, *Age of Hate*, 396-397; Randall and Donald, *Civil War and Reconstruction*, p. 603; Kelly and Harbison, *American Constitution*, p. 472; Patrick, *Reconstruction*, p. 121; DeWitt, *Impeachment*, pp. 202-203.

[55] Andrew C. McLaughlin, *A Constitutional History of the United States* (New York, 1935; repr. 1963), p. 667.

[56] The Tenure Act as a whole applied to hundreds of officials besides the Cabinet. Perhaps if the War Portfolio had not brought on a crisis, some non-Cabinet office would have. In the circumstances, however, Stanton's case was vastly more important than any other imaginable one.

officer, unless greatly deficient in manhood and honor, would stay on after the President asked him to leave.[57] The arguments of Johnson's lawyers make it difficult to maintain that Stanton was within the act. But a vote for conviction would be groundless if Stanton were not covered, a dilemma which taxed the ingenuity of some senators. George F. Edmunds resolved it in favor of conviction after a complex investigation of the word "of." Most historians have accepted the arguments of Johnson's defense counsel although there are a few, like Ralph Korngold, who by insisting that Stanton's removal violated the act are indirectly holding that the act protected him.[58]

The fourth question intrigued early historians much more than recent ones, in spite of its obvious significance for a clear understanding of Johnson's actions. The President assumed that his removal power was inherent in the character of the presidential office; that the power of removal included the power of indefinite suspension (of which he made use in Stanton's case); and that he had made the *ad interim* appointments of Grant and Thomas in a way permissible by acts of 1795 and 1863. The defense put forward these propositions at the trial; the ensuing adventures in statutory construction allowed both sides to climb to rarified heights of verbal interpretation, sometimes with the aid of logic and sometimes in spite of it. DeWitt and Dunning, who tarried over these issues longer than most other writers, differ in their conclusions. DeWitt's answers, not at all clear, must be obtained by inference, and they would seem to support the President. Dunning's more straightforward views are that removal does not include indefinite suspension, and that to allow the President to fill vacancies of his own making with *ad interim* appointments while the Senate is sitting (the circumstances in Thomas' case) "is undeni ly a convenient path to usurpation."[59] Yet the Tenure Act did not ific ally repeal any prior laws. Thus one could accept the defer rguments if one agreed that Johnson's actions were authorized l er law and not prohibited by the Tenure Act.

The importance of the fifth question is s t; Dunning thought it the key issue of the trial. He believed, the trial had not solved the question because of the uncertai her the Tenure Act protected Stanton. His own impression, in e drawn from Benjamin R. Curtis' trial argument, was that for t e purpose of "defending his right through the courts of law, and for this purpose alone, the preservation of the constitution warrants the executive in transgressing duly enacted legislation."[60] Dunning's position serves to show how interconnected the constitutional questions are, but not all historians have accepted his ideas. DeWitt, for example, believed that "the pivot of the entire impeachment" was whether the Tenure Act applied to Stanton. Burgess' findings were contrary to Dunning's; the President had no right to ignore a law, even one that infringed on his executive prerogatives. McLaughlin had his own idea. He thought Curtis had offered "a practical solution of the problem," but he did not fully concur with the former judge. "In pure theory," McLaughlin said, the President could decline to execute *any* unconstitutional law, but if the Senate sitting as a court of impeachment decided the law was valid, then the President's action "properly" subjected him to removal.[61] The difficulty of this idea lies in the necessity of regarding the Senate—which had passed the law to begin with—as the final authority on the constitutionality of its own acts. The views of two current co-workers on the rights and duties of the President may be profitably compared with earlier findings. Alfred H. Kelly and Winfred Harbison suggested that the Managers rebutted "effectively" the defense's argument that the President could violate a law as a means of obtaining a judicial test of its constitutionality. The Managers contended, of course, that the Senate would determine constitutionality in the process of trying the President. How "effective" the Managers were is a matter of conjecture. Kelly and Harbison follow Dunning exactly on this point; DeWitt, by way of comparison, merely said that Ben Butler had been "much more effective" here than at other stages in his argument. Really, however, had the prosecution been "effective" in any measurable degree, the Senate need not have evaded a vote on the main charge as contained in the first article. The views of Kelly and Harbison not only (like McLaughlin's) make the Senate the ultimate judge of its own acts, but in addition are internally inconsistent. In one paragraph a contention of the Managers that was "tantamount to the assertion that Congress possessed a final right of constitutional interpretation" is labelled "dubious" in view of the Supreme Court's power along that line; in the next paragraph comes the "effective" proposition about the power of the Senate. Needless to say, it is hard to rule on the constitutionality of a statute without "interpreting" the Constitution a bit.[62]

The sixth and final question arose because the Managers, in analyz-

[57] DeWitt, *Impeachment*, pp. 180-199, 450; McLaughlin, *Constitutional History*, pp. 666-668 & n.
[58] Korngold, *Stevens*, p. 412.
[59] DeWitt, *Impeachment*, pp. 340, 413, 432-434, 454; Dunning, *Essays*, p. 299.
[60] Dunning, *Essays*, pp. 292-293.
[61] DeWitt, *Impeachment*, p. 432; Burgess, *Reconstruction and the Constitution*, p. 183; McLaughlin, *Constitutional History*, p. 673.
[62] Kelly and Harbison, *American Constitution*, p. 476; Dunning, *Essays*, p. 292; DeWitt, *Impeachment*, p. 413.

ing Johnson's official correspondence and reports relative to Stanton's ouster, took the President's frequent references to his powers "under the Constitution and laws of the United States"—laws unspecified—to mean that he acquiesced in the validity of the Tenure Act. Reinforcing their view was the fact that in December, 1867, Johnson sent the Senate a special message explaining his reasons for suspending Stanton. Such a report was required by the Tenure Act although Johnson never admitted that as the reason for his sending it. In fact, at no time did Johnson recognize that the Tenure Act required him to do anything, or authorized him to do anything not already in his power to do. Nonetheless, some of his actions do superficially appear to be in pursuance of the Tenure Act, and a few historians have thus been led to criticize the President's "miserably clumsy" tactics, as McKitrick described them. In Fawn Brodie's opinion Johnson should have fired Stanton outright and grounded the action on constitutional rights of which Congress could not deprive him, instead of suspending Stanton "under the Tenure of Office Act," thus publicly recognizing its validity.[63] Actually, Johnson suspended Stanton not under the Tenure Act but under his concept of general powers inherent in the head of the executive branch. More important, however, is the idea that firing Stanton outright would have been better than the method used. Johnson had three choices. He could have acquiesced in the Tenure Act—which would have meant bowing to the will of the Senate. Or he could have openly defied and denounced the Tenure Act—which would have been the strongest possible resistance to Congress. He chose instead the third or moderate course—evicting Stanton without specifically recognizing or defying the Tenure Act, thus upholding his own powers and leaving the responsibility of further action to the Senate. In short, to apply the negative of one of McKitrick's concepts, Johnson was much less "provocative" than he could have been. All of this is not to say that Johnson's tactics were perfect. He did blunder, as in selecting Lorenzo Thomas as acting Secretary. The quarrel with Grant that same month, although a blunder in that Johnson lost Grant's friendship, was nor[illegible] quarrel of Grant's own making in which the Presider[illegible]s the sounder one. Considering the difficulty of h[illegible]g the War Office, Johnson's gamesmanship was [illegible]ismal as has been supposed.

One final difference among historians concerns the ultimate effect conviction would have had upon American political institutions. For this contest writers may be divided into two teams, the "Would-have's" against the "Might-have's." The first group maintains that

[63] McKitrick, *Johnson*, p. 490; Brodie, *Stevens*, p. 331.

conviction definitely would have demolished the separation of powers concept and reduced the presidency to a plaything of the ascendant group in Congress; the second group is much less sure. The early writers who tended to favor the President (Dunning, DeWitt, and Ross) are "Would have's"; of those who criticized the President, Burgess certainly and Rhodes probably belong with them. Some later historians are also first-string "Would-have's"; Beale, McLaughlin, Randall and Donald, Current, and Korngold. The bench consists of those whose views must be drawn from inference because they give more attention to dramatic narration than to conceptual analysis—Stryker, Milton, Bowers, and Lomask. The "Might-have's" are primarily more recent writers and—for the present, at least—they suffer from lack of manpower. Stampp, Patrick, Kelly and Harbison, and Brock are the front line, with probable reserves in McKitrick, Thomas and Hyman, and Franklin. The game, of course, is the historical style of "What iff" and, like most other mental exercises in speculation, it is not likely to reach a conclusion very soon.

One particular aspect of the Kelly and Harbison view is worthy of special note. They concede that the "would-have" theory "has some weight" but believe that it "ignores the political atmosphere" of reconstruction. The Radicals, they hold, regarded Johnson as a "traitor, a blackguard, a drunkard, and a madman." From this they conclude that ousting Johnson would merely have set the precedent of a loose construction of the impeachment power—the same precedent set by the conviction of federal judge John Pickering in 1804. They recognize that political schism was a salient factor in Johnson's case, but they insist that "many other long steps would have been required before impeachment became a mere routine means of voting 'no-confidence' in the parliamentary sense of the word."[64] This idea raises difficulties. For one, the impeachment of Pickering might have been the first of a half-dozen if the ensuing trial of Supreme Court Justice Samuel Chase had not ended in acquittal. For another, impeaching a President is a much graver undertaking than impeaching a judge. For a third, the Radicals assailed Johnson's alcoholic and verbal intemperance only after they saw him diverging from their own reconstruction philosophy. When in the first days of his presidency Johnson blustered about punishing traitors, Ben Wade exulted, "Johnson, we have faith in you. By the Gods, there will be no trouble now in running the government'[65]; not "Mr. President, we beg you to be more dignified lest

[64] Kelly and Harbison, *American Constitution*, p. 477; commentary by Kelly in Harold M. Hyman (ed.), *New Frontiers of the American Reconstruction* (Urbana, 1966), p. 53.

[65] Stryker, *Johnson*, p. 205; Rhodes, *History of the U.S.*, V, 150.

you degrade the presidency." Which brings us back to 1804. Would anyone have worried much about poor old demented John Pickering raving and lurching about in his remote New Hampshire courtroom if he had not been a rock-ribbed Federalist at a time when some very party-conscious Jeffersonians had just taken the reins of national power? Parallel lines do lead from the Pickering and Johnson cases, but they lead 180 degrees in the opposite direction from what Kelly and Harbison believe.

After a century of writing, is there anything left to say about the impeachment of Johnson? Or should we perhaps abandon the topic and thereby earn the accolades of future graduate students who will have a better chance of reading everything in print? Most of the points on which historians have disagreed are eligible objects of further inquiry. In addition there are a few specific matters and general concepts which have not heretofore caught historians' fancy. Out of ninety congresses the Thirty-ninth and Fortieth are surely among the ten most important, yet we know surprisingly little about their personnel. Scarcely a third of the senators have attracted biographers, and the brightly lit portion of the House chamber is hardly crowded. A whole generation of doctoral candidates in reconstruction studies could win their spurs by completing the title "The Life and Public Services of ....." with the name of an unknown lawmaker. But that is not the answer, at least not to the problem at hand. Biographies of men like George G. Fogg, Hezekiah Bundy, or Ginery Twitchell, even if enough material for them could be found, would probably be more of a clutter on already buckling library shelves than a substantial contribution to knowledge. Eminently useful, however, would be a study of the legislative operations of the two c ses from the standpoint of personal relations among the mem at went on in the committee rooms? What went on at supper r- wards? What happened to proposals that entered the leg o- per and never emerged? And why? Brock's volume is some s this line, but it breaks off in 1867, just when the impeachm was starting to become frantic.

Another fruitful line of attack would be to follow the lead o tistically minded investigators who have recently been counting the yeas and nays in congressional roll calls.[66] This arduous arithmeti-

[66] David Donald, *The Politics of Reconstruction* (Baton Rouge, 1965); Edward M. Gambill, "Who Were the Senate Radicals?" *Civil War History*, XI (Sept. 1965), 237-244; Glenn M. Linden, "Congressmen, 'Radicalism', and Economic Issues" (Ph.D. dissertation, Univ. of Washington, 1963); "'Radicals' and Economic Policies: The Senate, 1861-1873," *Journal of Southern History*, XXXII (1966), 189-199; "'Radicals' and Economic Policies: The House of Representatives, 1861-1873," *Civil War History*, XIII (1967), 51-65.

has in part been directed at discovering whether the "Radicals" really deserve their frequent characterization as a monolithic, strongly organized group. After reading the results, in which one encounters "Ultra Radicals," "Independent Radicals," "Stevens Radicals," and "Non-Radicals," among other sorts, one is no longer certain of anything, except that "Radical" is definitely a troublesome word. Perhaps it would be best to think of impeachment as the last move—inevitable or not, however one prefers—in a series of anti-Johnson actions that began when the Thirty-ninth Congress first met. If twenty House roll calls between December 1865 and February 1868 are plotted, and the votes recorded as either "for Johnson" or "against Johnson," interesting aspects of Republican voting behavior can be seen.[67] When on December 7, 1867, a resolution to impeach was defeated, 57-108, sixty-six Republicans cast their votes "for Johnson." Of these sixty-six, forty had previously cast ten or more votes (eighteen was the maximum possible) "against Johnson"; all but six of the others were freshmen who had not been in the Thirty-ninth Congress. Further, of these same sixty-six, thirty-four had voted to keep impeachment alive on at least two of the three prior, tabulated roll calls concerning impeachment. As would be expected, those of the fifty-seven impeaching Republicans who had been in the Thirty-ninth had cast a high percentage of "anti-Johnson" votes all along. It must not be supposed, however, that because sixty-six Republicans took Johnson's side on one roll call his general level of party support was high. On the other four impeachment tallies the President's Republican supporters numbered sixteen, ten, zero, and zero, respectively; on the legislative questions he got an average of six. Even on the Colorado bill, where the Republican position was easily assailable, the figure barely reached thirty. The impeachers clearly benefited from the turnover in personnel between the two congresses; twenty-eight terminal House members of the Thirty-ninth opposed impeachment, whereas forty-three new members of the Fortieth favored it.

Senate roll calls fall into three categories: thirteen ordinary legislative questions like those analyzed for the House; four actions (two before the trial and two after) pertaining to Stanton and the War

[67] The twenty roll calls are: tabling a motion by Thornton on the franchise (Dec. 18, 1865); Bingham's motion (Jan. 9, 1866); two motions (Feb. 20, 1867) on the command section of the Army Appropriations Act; passage of the Colorado bill (May 1866 and Jan. 1867) and of the Nebraska bill; overriding the vetoes of the Civil Rights bill, second Freedmen's Bureau bill, District of Columbia suffrage bill, Nebraska bill, First and Second Reconstruction Acts, and the Tenure Act; Ashley's resolutions concerning impeachment (Dec. 17, 1866, and Jan. 7, 1867); Holman's minority resolution on impeachment (Mar. 7, 1867); the impeachment resolution of Dec. 7, 1867, and the final resolution of impeachment on Feb. 24, 1868.

Office; and twenty-nine questions arising during the trial. Turning first to the trial roll calls, one notices that eleven of the seventeen fiercest presidential opponents were relatively minor figures. Ramsey, Thayer, Cragin, Drake, Nye, Cameron, Chandler, Howard, and Wade cast not a single pro-Johnson vote; Tipton, Conness, and Harlan cast one; Pomeroy, Cattell, and Yates cast two; Stewart and Wilson cast three. Why should so many of the irreconcilables be faceless individuals? One is also led to wonder about specific individuals. Why should Anthony vote for conviction after giving twenty-three favorable votes? What motivated Frelinghuysen, Morton, and Sprague, whose favorable and unfavorable votes were fairly equal? Numerically, Sumner and Sherman belong with these three, but we already know the explanation in their cases. Sumner was so adamant for conviction that he thought evidence was irrelevant and thus was willing to let the defense offer anything they pleased. Sherman simply got himself hopelessly tangled in his own inconsistencies after March 1867.

Comparing the Senate's trial and pre-trial votes discloses a fascinating consistency, going back to 1866, among the seven Republicans who voted to acquit. They were thoroughly hostile (except for Van Winkle) on the legislative questions; hostile or non-committal on the War Office before the trial; and thoroughly favorable (except for Henderson) during the trial. Indeed, since all but Henderson cast twenty-three or more pro-Johnson votes on the twenty-nine trial questions, perhaps they ought not be thought of as waverers whose votes could go either way. The same comparison also discloses a condition similar to that found in the House—a vote to convict, except in the cases of Morgan, Edmunds, and the freshmen, topped off a two-year career of persistent perversity. The President's opponents in the Senate came through the shift from the Thirty-ninth to the Fortieth Congress with a net gain, but not as great a one as that in the House. A lot of the Senate switches were pretty even trades, like Kirkwood for the equally bitter Harlan and Guthrie for the equally loyal McCreery. Johnson's only serious losses were in Cowan giving place to Cameron, Nesmith to Corbett, and McDougall to Cole. It is speculation, of course, but from the looks of the tabulations made, the Thirty-ninth would have let Johnson off by three or four votes on any set of charges, and by even more on the particular ones that its House thought about presenting.

One final point arises from the charts. It has sometimes been suggested that reconstruction was a reaction against the expansive concepts of presidential power held by Lincoln and Johnson—a desire to revert to the pre-war state of affairs in which Congress ran the country. To some extent the voting patterns bear this out; in the House twenty-five of the thirty-five members who had served prior to 1860 could be called presidential opponents; in the Senate the percentage drops to sixteen out of twenty-seven.[68]

Several specific episodes claim additional attention, among them the Senate's decision not to concur in Stanton's suspension, a decision which is usually thought to have been unavoidable. But was it so? The acts of February 13, 1795, and February 20, 1863, both contained clauses restricting temporary appointments to six months. It was never clearly settled whether these acts, particularly the earlier one, applied to Stanton; but if they did, Grant's sojourn would end only a month after the vote was taken, whereupon the President would be required to nominate a regular appointee. Perhaps the Senate can thus be charged with unnecessarily hostile action. It would also be nice to know why some of the proposed articles of impeachment were never adopted, especially the one by Congressman Thomas Jenckes, which dealt with Johnson's alleged efforts to control the occupation forces in the South. Last of all, the attitude of post-impeachment Congresses toward the executive branch might prove interesting. If DuBois was correct that the relevant constitutional principles were "antiquated," why did Congress not change them by amendment? Did the solons realize too late a principle deserving of more general recognition—that the failure of revolutionary methods precludes the instigators from then resorting to non-revolutionary ones? Thus it seems that Impeachment still offers a few intriguing questions for scholars to wrestle with. Someone ought to take them on.

[68] This section involved a lot of dull paper work. Hearty thanks, therefore, to Mr. Stephen C. Bedau, who fought off the lure of California's surf long enough to do an excellent job making charts and counting heads.