

George Washington's 'Precedent'

President Nixon, in his State of the Union message, pledged cooperation with the House investigation on impeachment but with the significant exception that he would "follow the precedent that has been followed by and defended by every President from George Washington to Lyndon B. Johnson of never doing anything that weakens the office of the President of the United States or impairs the ability of the Presidents of the future to make the great decisions that are so essential to this nation and the world."

The President's reliance upon that most prestigious precedent-setter, George Washington, however, could prove embarrassing and indeed harmful to the President's defense. For no doubt, he is unaware, as are other Americans, that George Washington also ran into impeachment threats. And while Washington was convinced that executive privilege or confidentiality was an important concept to be protected by the President, he also believed that this presidential prerogative would have to be waived in an impeachment proceeding.

Near the end of his second term of office, Washington suffered waning popularity as deeply divisive foreign policy and domestic issues polarized the country. Europe was embroiled in war, and the fledgling American republic desperately attempted to remain neutral. In an effort to maintain friendly relations with Great Britain, President Washington appointed John Jay, Chief Justice of the Supreme Court, as special envoy to England. The resulting Jay's Treaty, ratified by the Senate in 1795, sparked the bitterest controversy of the Washington administration and led to denunciations of the President and calls for his impeachment.

Appearing in the influential Philadelphia General Advertiser, chief national newspaper of the developing Republican opposition party, a series of charges were leveled against Washington, accusing him of malfeasance in office and of dangerously increasing the power of the executive branch. Specifically, the President was charged with ignoring the "general will" of the people, which was opposed to closer ties to England, and with violating the separation of power concept in his appointment of the Chief Jus-

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tice to become an agent of the executive branch.

At the time when this vocal minority was calling for action against Washington the United States was in an extremely vulnerable position. With the Constitution less than a decade old, secession was being talked of in New England and the West. Dissatisfaction with the federal government had flared into armed insurrection only a year earlier. Only the most sanguine of observers could have absolute confidence that the union and republicanism would last. Yet despite this, these presidential critics were convinced that impeachment proceedings should be initiated. For even though it was extremely unlikely that the President would be convicted, one anonymous essayist wrote, there were "important purposes to be gained by even a vote of impeachment. It would convince the world that we are free and that we are determined to remain so. It would be a solemn and awful lesson to future Presidents: it would exact a scrupulous administration . . . of the Constitution; it would give confidence to the people in the government; it would exact a respect for the laws, and it would impress the strongest conviction of the virtue of our representatives and the justice of our country. Lessons like these would not be useless; for when even a *Washington* would not be permitted to sport with our rights, and trifle with things sacred, we might calculate upon transmitting our inheritance to posterity . . ."

Despite these efforts, the impeachment issue was short-lived, was not supported by the Republican Party leadership and never reached the House of Representatives. House members did, however, in an effort to block implementation of the hated Jay's Treaty, pass a resolution directing the President to furnish them with all documents and papers relating to the treaty. Washington refused to comply, citing the importance of the national defense and the need for secrecy. Furthermore, he argued:

"To admit then a right in the House of Representatives to demand, and to

have as a matter of course, all the Papers respecting a negotiation with a foreign power, would be to establish a dangerous precedent."

Thus Washington believed that his constitutional responsibilities as Chief Executive compelled him to withhold certain information from another branch of government.

But in this denial of the Jay Treaty papers to the House of Representatives, Washington made a crucial interpretation of executive privilege. Under the House's constitutional mandate, the President argued, the only circumstance that would justify "the inspection of the papers asked for" would be "that of impeachment, which the resolution has not expressed." In other words if the House's request for information had come as part of an impeachment proceeding, the President would have considered himself duty bound to furnish the documents, even though the information would not ordinarily be within the legitimate scope of the House's jurisdiction.

The precedents set during the Washington administration are important for the insights that they give into the minds of that generation of Americans who discussed, framed and adopted the Constitution. The Revolutionary experience had burned into their consciousness the political axiom that unchecked executive power leads to tyranny. And nowhere was this made clearer than in the campaign to win support for the Constitution. Even Alexander Hamilton, the arch apologist for executive power, strove in the Federalist Papers to convince a skeptical public that the President would be accountable to the people and "at all times liable to impeachment, trial, dismissal from office . . . and to forfeiture of life and estate by subsequent prosecution in the common course of law."

Americans in the early years of our republic, then, regarded impeachment not as an unthinkable or unworkable procedure, but as a viable and important instrument to check the excesses of the executive branch. Unwillingness to invoke impeachment as the orderly, constitutional process to remove a President from office would, in fact, give the executive an immunity which could not be breached, except in Hamilton's words "without involving the crisis of a national revolution."