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HOW IMPEACHMENT DIVIDES EXPERTS

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Although the Vice President has, more or less, invited the House to impeach him, it is far from certain that impeachment is the proper remedy for the crimes Agnew allegedly committed.

The legal precedents are so murky, and so intertwined with the political infighting tht has always accompanied impeachment, that the only undisputed statement that can be made about impeachment is that the experts are divided.

The most recent scholarly work suggests, for example, that impeachment would be totally inappropriate, unnecessary and perhaps even unconstitutional in the vice president's case.

According to Raoul Berger, an American legal historian at Harvard law school and the author of a recently published treatise on impeachment, the framers of the Constitution intended impeachment to be used only when an official could not be punished under the ordinary criminal laws.

If a government officer — be he president, vice president or judge — has violated a specific state or federal statute, then he should be indicted and triad through the regular criminal processes, Berger argued.

That would seem to be the case with Agnew, who could be charged under federal law with bribery and various tax violations if the widely publicized accusations against him are borne out.

An opposite view is taken by Charles Alan Wright, President Nixon's attorney in the Watergate tapes dispute and a University of Texas law professor. In briefs filed to support Mr. Nixon's refusal to relinquish the tapes, Wright argued that presidents — and presumably vice presidents, too — are answerable not to an ordinary court, but only to a "court of impeachment."

HAMILTON

Wright relied heavily on Alexander Hamilton, writing in The Federalist Papers, who suggested that, once a "civil officer" was impeached, convicted and removed from office, he "would afterwards be liable to prosecution and punishment in the ordinary course of law."

The constitutional literalists also back Wright. They cite the constitutional provision that says the President and vice president "shall be removed from office" for "treason, briebery, or other high crimes and misdemeanors."

If the facts make out a case of bribery against Agnew, then isn't the Constitution right on point? Isn't impeachment clearly the right remedy?

PRECEDENTS

Historical precedents seem to tip the balance toward Berger's view. Judge Otto Kerner of the U.S. Court of Appeals in Chicago was successfully prosecuted by the Nixon administration for bribery and perjury — without being impeached first. Other judges, too, have been indicted.

From these precedents, some pro-indictment experts argue that there si no difference between a vice president and a judge, and no difference between a vice president and a congressman, so there is no bar to indictment.

But the other side warns against relying too much on these precedents. Kerner, they point out, never claimed he had to be impeached before he could be indicted, so the issue is still open.

Even in the face of precedents indicating that indictment can precede impeachment, other experts claim that the House could decide that indictment need not always come first and, in Agnew's case, impeachment first.

CALHOUN

If the house leaders choose this course, they can call up a precedent of their own: The investigation of Vice President John Calhoun, who weathered an abortive impeachment or indictment.

Undercutting the value of the Calhoun case, however is scholarly uncertainty about whether Calhoun, who supposedly profited from an Army contract, violated a specific law. For him, criminal indictment may never have been feasible.

In the end, torn between precedents, the House could ignore history altogether and simply decide whether it wants to try impeochment. Representative Gerald L. Ford (Rep-Mich.), for one, believes that the indictment-impeachment debate is irrelevant.

An "impeachable offense," Ford has said, is "whatever the House considers it to be."

Besides deciding which comes first, impeachment or indictment, House leaders also will have to consider a recently uncovered 100-year old case that suggests Agnew cannot shift the action to Congress no matter how strongly he may want to.

COLFAX

The case involves Schuyler Colfax, vice president under Ulysses S. Grant, who was investigated by a House committee in 1866 for taking shares in the government-subsidized company formed to build the Union Pacific Railroad.

After a lengthy investigation, the House Judiciary Committee ruled out impeachment. The reason: If Colfax did take the bribe, he did it before he was elected vice president. Impeachment, the committee said, applies only for removal of a man from an office he has abused while occupying it.

Although that is merely one committee's opinion, and does not have force of law, it could be determinative in Agnew's case. It would mean he could not be impeached for what he did while he was Governor of Maryland or Executive of Baltimore county. Only if it could be proved that he took bribes after he became vice president — and there have been some hints that he did — could he be impeached.

OTTO KERNER
Judge who was tried

CHARLES WRIGHT
President's lawyer