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Dick Nolan

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The Butler precedent

Old Ben Butler, the only Union general to have the Confederacy put a price on his head, was one of the cleverest lawyers ever to emerge from the Yankee courts of the Commonwealth of Massachusetts. How fascinating to hear Butler being quoted as an expert on what constitutes grounds for impeachment. After 100 years, Ben's words still make sound good sense.

In the Reconstruction Period, Butler more or less idly ran for Congress, not from his home district, but from a plot of beach land where he had pitched a tent as a vacation spot. He said at the time he was curious to see whether he could get elected even though he was clearly a carpetbagger in Essex County, his home being in Middlesex.

Butler was a hard - liner. He thought the state governments which had made up the Confederacy ought to be dissolved temporarily, and the South governed in a system of military districts. He was in favor of treating the Southern leaders as rebels in arms, and trying them for treason.

At first President Andrew Johnson got on well with Butler and the other hard-liners. Later he broke with them, got into his critical row with War Secretary Stanton and in time became the first President in history to be impeached by the House and tried by the Senate.

The same problem confronted the House then that plagues it now: What constitutes an impeachable offense?

In 1867 the stumbling block, as now, was the Constitutional language citing "high crimes and misdemeanors."

Butler took a broad view of the Constitutional section, basing it on a long and lawyerlike analysis of British law from which, he contended, the framers of the Constitution had received their inspiration.

In his memoirs, Butler recalled his differences with the House authorities who handled the impeachment matter.

"I did not agree to the articles presented or to the doctrines which were the guides by which they were presented," wrote Butler.

"A great many men in and out of Congress, especially college professors, who always claim to know more about free trade and government than any practical man in the country, held that 'high crimes and misdemeanors' . . . must be some crimes that were known in the catalog of offenses punishable by imprisonment or penalties, and that the President could not be impeached unless it could be shown that he had done something for which he might be brought before a court and indicted and sentenced to pay a fine at least.

"Let me illustrate: The President in their view could be impeached for stealing a chicken, because there is a penalty attached to that by the law. But if he broke his Constitutional obligations to his country in any form however gross, an offense not punishable by law, he could not be impeached.

"I held entirely different opinions. I believed that the framers of the Constitution, knowing full well the parliamentary and common law of England, which permitted the impeachment of any high officer for any misdemeanor in office or any act detrimental to the crown or country, had with that same view put the words 'high crimes and misdemeanors' into our fundamental law wholly regardless of technicalities, so long as these offenses were such as would affect the dignity and purity of conduct in office."

In due time Lawyer Ben Butler took part in prosecuting President Johnson before the Senate. He had with him a ponderous volume of English state trials which, he said, he found of great service.

Nothing much was settled by the Johnson impeachment. The argument still goes on today, in the matter of Richard Nixon, as to just what constitutes "high crimes and misdemeanors." We hear even more confusion, I think, since some are still insisting that Nixon has to be proved guilty of something BEFORE he can be tried by impeachment.

For the strict constructionists, the question remains: "Did the guy steal a chicken?" And those who view the matter more rationally are still looking to Ben Butler for advice.