

## Editor's report

# Politics and impeachment-II

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NEW YORK — As outlined here last Sunday in the first of these two columns on impeachment, the intent of our Founding Fathers in creating the extraordinary extra-judicial removal process was to minimize partisanship and promote a maximum of orderly justice.



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In this they made one of their rare misjudgments. The 55 remarkable men who created the Constitution of the United States at Philadelphia in 1787 simply underestimated the lure and influence of politics as a kind of ultimate power game.

The Senate envisioned by the patriots in Philadelphia was supposed to be above politics, its members being named by the various state legislatures rather than elected by the people. It was for this reason that the Senate was entrusted with the duty of acting as final judge and jury in

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impeachments—or indictments—made against high officials by the elected lower house.

Long before the Constitution was amended in 1913 to provide for direct public election of senators, however, the members of that body had woefully failed to live up to the Philadelphia vision of them. From the very first, the presumably noble supermen were up to their periwigs in politics.

It figures, after all. Playing politics is maneuvering for power. And power in government, once tasted, seems to have a flavor more satisfying than the achievement of any position and wealth in more mundane life. Trying to keep politics from dominating the impeachment process, in which the power of the biggest bigwigs is at stake, thus turned out to be an impossible task—even for our remarkably prescient Founding Fathers.

Politics has played a major role in virtually all of the 12 impeachments voted by the required simple majority of the House of Representatives, only four of which subsequently resulted in conviction and removal by the required two-thirds vote of the Senate.

And, even today, after almost 200 years, there still is no firm legal agreement on precisely what grounds an official may be impeached, convicted and ousted from office.

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THE FIRST OFFICIAL to be impeached by the House and convicted by the Senate was a federal district judge, John Pickering, of New Hampshire. In 1804, several years after a mental breakdown, he was ousted because of allegedly drunken behavior in a smuggling trial. But there is no doubt whatever that the judge, a Federalist, actually was brought down because of his loud and vigorous criticism of the Jeffersonian majority in Congress.

Space prevents elaboration on a pattern which has its most notable prior example in the drive to unseat President Andrew Johnson, the only previous chief executive to undergo Congress' "grand inquest of the nation." His House impeachment missed Senate conviction in 1868 by only one vote.

Johnson was tried for allegedly committing the vague "high crimes and misdemeanors" which are cited as grounds for impeachment in the Constitution. The only "high crime" he had committed was his insistence on carrying out the post-Civil War policies of his assassinated predecessor, Abraham Lincoln. Those policies, with their humane concern for the South, were too much for the vindictive legislators of the North.

Like President Nixon, Johnson complicated and exacerbated his position by repeated demeaning challenges to Congress. In the end, impeachment proceedings against him were more an attempt to prove who was basically boss in the apparatus of government than anything else—a tendency being manifest all over again today.

The point which needs constant emphasis and re-emphasis is that impeachment, that very rare and most extreme action, almost inevitably is corrupted by partisan politics and political considerations. Impartiality of judgment is all but impossible, especially with the lack of detailed measures to insure it.

Thus, in the impeachment case against Andrew Johnson, there was nothing to stop the obvious impropriety of having his potential successor sit in judgment on him.

That man was Benjamin F. Wade of Ohio, president pro tem of the Senate, who cast a vote for conviction.

On the other hand there was nothing to stop Johnson's son-in-law, Sen. David T. Patterson, of Tennessee, from casting an equally dubious vote for acquittal. So loose are the rules of impeachment, in fact, that senators have testified as witnesses before the House and later voted on the articles of impeachment which resulted.

A controlled, dignified and fair judicial process is something which impeachment most definitely is not.

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IN THE CENTURY plus since the Johnson case, a new factor has been added to power politics which makes impeachment, or its prospect, even looser and rougher than it always was. That factor is the instant communication of today's omnipresent press and television networks.

Whether President Nixon will be impeached or not is beside the point here. The point is that both he and his accusers are trying to manipulate the press media in a desperate struggle to influence public opinion. And the media itself is so active a participant that some of its most powerful members have been slanting the news unfairly to support convictions traditionally restricted to the editorial pages.

The battle to influence public opinion, of course, underscores the all-important element of politics in impeachment. Both the accused and those who have the direct responsibility of judgment are answerable to the voters. Thus the most important consideration in impeachment is not necessarily the nature of the charges. It is calculating the percentage of public backing that can be mustered.

President Nixon, as proud and stubborn a man as ever was, probably would not be facing the prospect of impeachment if he had not provoked Congress on the question of relative powers. It would have been much cleaner to allow the Supreme Court to decide who has authority over those controversial tapes and papers. Now, at this late date, the President is waging a personal appearance campaign to insure the minimum of public support he needs to avoid an impeachment conviction.

His prospective jurors, meanwhile, have been prejudging him right and left by taking part in opinion polls and sounding off to the reporters who keep after them for words to print and faces to fill the television screen. The same behavior by a panelist in a judicial process would mean his instant dismissal, but probity and fair play all too often get lost when instant ego gratification is added to politics.

By no means have all our lawmakers yielded to the lure of the mass media podium. Even though there is nothing illegal in public prejudging the potential Nixon impeachment, many members of Congress have refrained out of a basic personal sense of fair play. Their attitude has been commended and encouraged by such responsible men as Senate Majority Leader Mike Mansfield and Minority Leader Hugh Scott.

Politics is the devil destroyer of the ideal. And it will be seen in all its monstrous evil if Congress decides to go ahead with impeachment of the President and allows the proceedings to be televised live.

What a brutal, shameful Circus Maximus that would be for a people whose proudest traditional possession is their high ideals.

The men who composed our Constitution at Philadelphia in four months would have been appalled by the very thought. They had the good sense to perform their historic work behind sealed doors, wholly undistracted in what they knew was of monumental importance to the fellow Americans they represented.