Accountability and Impeachment

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WASHINGTON, July 29—Like dozens of public officials and leaders before him, Richard M. Nixon was being asked today to answer for the acts of his subordinates.

News Analysis

The House Judiciary Committee had before it a proposed article of impeachment condemning the President for alleged misconduct carried out "personally and through his subordinates and agents." The issue, as the debate wore on, was not whether Mr. Nixon could ever be held accountable for his aides, but, instead, the circumstances in which he could be held accountable.

Is Mr. Nixon responsible only for those acts carried out "pursuant to his instructions, or perhaps policy," or "ratified and condoned by him as his acts," as Representative Charles E. Wiggins, Republican of California, suggested?

Or does he have a broader responsibility, as many Democratic members of the committee suggested?

In 1789, in the First Congress, James Madison remarked that a President would be subject to impeachment if he "suffers" executive offices "to perpetrate with impunity high crimes or misdemeanors against the United States, or neglects to superintend their conduct, so as to check their excesses.

Cited As Proof

Madison had been one of the key drafters of the Constitution two years earlier. So, although his statement was disputed by another member of the First Congress, it is generally cited as proof that the Constitution's impeachment provision poses at least some measure of accountability on the President for the acts of his aides.

There is little beyond that one statement, either in history or legal literature, to explain just how the concept of accountability is to be used in impeachment. But there are theories of accountability developed for various other types of legal proceedings — in military law, for example, and in

Those theories are relevant to the impeachment proceedings to the extent that the proceedings in which they are used match the impeachment proceedings.

On the civil side, as some committee members noted today, there is a body of law labeled "agency" law regarding the responsibility of a "principal" for the acts of his "agents."

'Respondeat Superior'

One rule in agency law is "respondeat superior" translated as "let the supervisor respond"—and meaning, generally, that a principal—is responsible for the acts of an agent if those acts were carried out by the agent within the "scope of his authority."

According to legal experts, the principal can be held liable for those acts whether or not he knew of them ahead of time, whether or not he ordered the agent to carry them out, or whether or not the acts exceeded the agent's legal authority.

Under this theory—also called the "master-servant" rule—corporations have been responsible for acts of their employes, and unions for those of their members.

The test is the "scope of authority" and it need not be the

Nixon Responsibility for Aides Debated by House Panel

scope specifically intended by the employer or "principal." It can be the "apparent" scope, as defined by the outside world.

Negligence Factor

A second rule in agency law involves negligence; a master can also be responsible for acts committed by a eervant outside the scope of the master's authority if the master had reason to think that the servant might commit them.
the quick brown fox jumped over the lazy dog the quick

Thus, if the owner of a large country estate hired as a guard someone he knew to be violence-prone and told him to keep off trespassers, and the guard then used excessive force force to evict a 4-year-old child. the owner of the property would be resonsible for injuries to the child.

In the criminal law, the standard for accountability is far stricter.

"Normally, criminal culpability is not derivable," according to Richard Uviller, a professor at Columbia Law School and a former prosecutor. "The defendant must have a culpable state of mind—intent, and knowledge."

It is, as Professor Uviller noted, the "traditional common-law notion of culpability."

It does not totalling bar accountability of one person for acts of another thereto—there is a principle of criminal negligence, and it can be applied to the principal-agent situation. The owner of a bus line who hires a habitual drunkard as a bus driver and thus creates a hazard, Professor Uviller suggested, might be held criminally liable on the ground of gross negligence.

Conspiracy Example

Moreover, in a conspiracy, the acts of one conspirator are attributed to other conspirators —even if the acts were not approved ahead of time by the other conspirators—so long as they were committed in the course of the conspiracy.

Accountability is also a concept in military law. On occasion, the concept has been applied in extreme ways. Shortly after World War II, for example, General Yamashita, the commanding general of the Japanese Army group in the Philippine Islands, was charged, convicted and executed on the ground that he "failed to discharge his duty as commander to control the operations" of the members of his command, permitting them to commit atrocities and other high crimes against people of the United States and the Allies.

Yet, the Yamashita case was much criticized at the time. As Dean Robert McKay of the New York University Law School noted today, it was considered by many to be too tough a standard and one that should not be applied to American officers. Moreover, it was a military case, involving an enemy officer in a time of war.

Considered Too Tough

Some members of the Judiciary Committee—including at least one Democrat—suggested today that they also considered the accountability standard in agency law too tough for an impeachment proceeding. Among other things, the consequence of applying the master-servant rule to Mr. Nixon are much more momentous than those that come from applying the rule to a negligent homeowner.

To some commentators, the standard should be somewhere between that set in the criminal law and that set in the civil law—a standard that takes into account the need for the President to supervise and lead his aides on the one hand, and, on the other, the impossibility of his being able to control every detail of every employe in the executive branch.

The Republican members of the committee seemed to think that a President could properly be held to account for acts that he directed or that he condoned. Professor Uviller suggests a few others: acts that he knew about and did not stop, and acts that he should have known about but did not, perhaps because of what Charles L. Black Jr. of the Yale Law School calls gross and habitual indifference.