gress represented sharply the many special interests of class and section, and representative government in these terms cost billions. Although the second session exhibited, in the main, a picture of President and Congress working together, it also demonstrated how weak are the devices of responsible leadership and control when strained by the divisive force of organized minorities. Can the presidential system continue as a game of touch and go between the Chief Executive and congressional *blocs* played by procedural dodges and with bread and circuses for forfeits?

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Is There a Time Limit for Impeachment? The failure of the recent attempt to impeach the late Governor Horton of Tennessee is of particular interest to students of political science because of the grounds upon which the failure to impeach was justified. The main reason given by many members of the legislature was a constitutional one, namely, that an officer cannot be impeached during his second term of office for high crimes and misdemeanors committed during his first term. Considerable doubt remains as to the soundness of this position, many people thinking that the explanation given was a clever excuse but one that would not justify the failure to impeach.[1] It is interesting, therefore, to ascertain if, in impeachment trials where this point has arisen, a similar position has been taken either by legislative bodies or by the courts.

Like most state constitutions, the Tennessee constitution has only general provisions dealing with the rules of impeachment. The house of representatives impeaches; the senate acts as the court; and a two-thirds vote of this body is necessary to convict. The constitution then lists the officers who may be impeached, and states that impeachment may take place whenever officers, "may, in the opinion of the house of representatives, commit any crime in their official capacity which may require disqualification."[2] The only limit placed on the nature of the offense, therefore, is that it must be committed in the official capacity of the officer. No mention is made of a "term of office"; nor can it reasonably be inferred that it was the intention of the constitution's makers so to limit the liability of the officers of the state.

In glancing over the impeachment trials of federal officers, we discover only one instance in which the Senate of the United States has failed expressly to find guilty an officer charged with offenses committed during a previous term of office. This case was one in which there was

[1] A similar position was taken by Mayor Walker in the hearing conducted before Governor Roosevelt. This case will be considered later.

[2] Art. 5, sec. 4.

a change of offices, and not the holding of the same office for several terms. In 1911, Judge Archbald, of the now defunct Commerce Court, was impeached on thirteen counts.[3] Six of the articles of impeachment maintained that he had wrongfully accepted money while he was a district judge, before he was in any way connected with the Commerce Court. On all charges of crime committed during his term of office as a district judge he was acquitted, while he was found guilty on other charges based upon actions that occurred during the time while he was a judge of the Commerce Court. Senator Stone gave as his reason for voting "not guilty" on the first group of charges: "I have grave doubts as to whether acts committed as an official while holding a given office can, after he ceases to hold that office, be made the basis of impeachment."[4] Other senators held the same opinion.[5]

Unfortunately, the issue was clouded by other considerations. Several senators, e.g., Root, Lodge, and Cullom, who voted "not guilty" did so because they considered that the offenses charged did not constitute crimes and misdemeanors. The charges were vague and uncertain; even the counsel for the defense considered them of minor importance.[6] Some senators also voted "not guilty" as to the charges relating to conduct in the district judgeship for the reason that, since Archbold had already been found guilty on the other charges, there was little point to voting him guilty on charges of somewhat doubtful propriety.[7] The senators named above, and many others, considered, however, that there was no inherent obstacle to trying a judge on charges relating to an earlier tenure of a different office.[8] It must be remembered that there is not a clear analogy between this case and any attempt that might have been made to impeach Governor Horton. The latter was serving his second term as governor, whereas in the Archbald case the attempt was to remove a Commerce Court judge for offenses committed while holding another office.

Another case often erroneously cited in substantiation of the idea that the Senate of the United Sattes has limited its power in respect to impeachments is that of William Blount of Tennessee. Blount was expelled from the Senate, and the House of Representatives later impeached him. He pleaded in defense, first, that a senator is not a civil officer under the meaning of the Constitution, and, second, that he was not himself a

[3] See *Proceedings of the United States Senate and House of Representatives in the Trial of Impeachment of Robert W. Archbald* (Washington, 1913).

[4] *Proceedings*, Vol. XI, p. 1652.

[5] See statement of Senator Simmons and others. *Proceedings*, Vol. XI, p. 1675 *et seq.*

[6] Statement of Simpson, counsel. *Proceedings*, Vol. XI, p. 1510.

[7] Statement of Senator Borah. *Ibid.*, p. 1635.

[8] *Ibid.*, p. 1650 *et seq.*

senator when the articles of impeachment were adopted. His plea was sustained on the first ground alone; accordingly, the ruling in that case is not authority on the question before us.

It might be asked, therefore, if an officer can be impeached after he has resigned his office or after he has severed his official connections. In England, it would seem that an officer can be impeached for any act, at any time, while in the United States we have a few examples of officers being impeached after they were out of office. Secretary of War Belknap secured the acceptance of his resignation by President Grant in order to evade impeachment. The House of Representatives, however, by a unanimous vote started impeachment proceedings notwithstanding the previous acceptance of his resignation. In the Senate he was found not guilty, although a majority of the senators voted guilty. The vote was 37 to 25, and the 25 votes were secured only through strong political pressure. Only 23 of the 62 senators believed that the Senate did not have jurisdiction because of the previous resignation of the officer.[9]

Years later, a case that was in many ways similar to the Belkhap case arose in Montana. Impeachment charges were filed against Judge Charles Crum in the senate of that state.[10] At a later date, he sent to the governor a letter of resignation, which was accepted. Two days later, the impeachment trial started. At the outset, a resolution passed the senate "to continue the trial of Judge Crum notwithstanding his resignation from office."[11] It would appear, therefore, that once an official has served his term and quietly returned to private life there is little danger of impeachment. However, when an official resigns in order to evade impeachment, the prevailing American doctrine is that he still may be impeached. The reason for this position is that in most instances when the senate finds an officer guilty of misconduct in office, he is disqualified from ever again holding public office.

Three times, in the history of the states, state officials have been impeached during their second term for offenses committed during their first term of office, and in each instance the senate has declared that it had jurisdiction to try the individual for such offenses. In the early history of Wisconsin, Levi Hubbell, a circuit court judge, was impeached for offenses committed during his first term, although the charges were not brought forward until his second term was well under way.[12] The question of the propriety of such action having been raised, the following resolution was passed by a vote of 19 to 5: "That the court in the trial

[9] *Proceedings of the Senate Sitting for the Trial of William W. Belknap* (Washington, 1876).

[10] *Proceedings of the Court for the Trial of Impeachment in the case of Charles L. Crum* (Helena, 1918).

[11] *Ibid.*, p. 24.

[12] *Trial of Impeachment of Levi Hubbell* (Madison, 1853).

of impeachment now pending have jurisdiction to inquire into offenses charged to have been committed as well during the former term of office of Levi Hubbell, judge of the second judicial circuit of the state, as into offenses charged to have been committed during the present term of the said office."[13]

When David Butler, governor of Nebraska, was impeached, several of the charges were for acts committed during his first term.[14] After considerable debate upon the question of jurisdiction, the senate unanimously passed a resolution "to investigate acts done in a previous term."[15]

George C. Barnard was reëlected a justice of the highest tribunal in New York State, and immediately after his reëlection was impeached.[16] Eleven out of the 38 articles dealt with misconduct occurring during a previous term of office. Barnard's lawyers maintained that since he "was reëlected, he came into possession of his new office approved and certified by the people as capable and worthy to occupy his position."[17] However, the court held otherwise, for by a vote of 9 to 23 it was decided that the senate had jurisdiction to try the case.

In the hearing held before Governor Roosevelt to determine whether James Walker should be removed from the office of mayor of New York City, the counsel for the defense maintained that Mayor Walker could not be held accountable for acts committed during a previous term. It must be remembered that this action did not constitute an impeachment trial, but only a hearing whereby the governor could ascertain the facts in the case. When the question of the legality of the hearing was taken to the courts, Justice Staley, in a memorandum opinion, held that there was no legal ground on which the judiciary could interfere. In some *obiter dicta* remarks, however, the justice stated: "That the act or neglect justifying the removal must have relation to the administration of the office during the term which the officer is serving has been pronounced and followed by numerous executive and judicial authorities. No greater power should be read into the removal power by implication. The application of this principle precludes the consideration of charges dealing with official acts occurring prior to the present term of office or in the transaction of his personal affairs, not within the scope or affecting official action, unless such action amounts to moral turpitude."[18]

Governor Roosevelt refused to give any weight to this opinion, maintaining that it was not binding upon him, since the judge himself so ruled in another part of the same opinion; that he therefore had the right to

[13] *Ibid.*, p. 77.
[14] *The Impeachment Trial of David Butler* (Omaha, 1871).
[15] *Ibid.*, Pt. V, p. 9.
[16] *Proceedings in the Court of Impeachment of George G. Barnard* (Oswego, 1875).
[17] *Ibid.*, Vol. I, p. 159.
[18] *New York Times*, Aug. 30, 1932.

make his own rules of procedure; and adding that in this case he had decided to consider acts irrespective of the time when they occurred. The governor, however, "differentiated between acts which were known to the electorate when the officer was reëlected and acts which were subsequently disclosed after the beginning of the second term. "It is not common sense," he maintained, "to consider reëlection an endorsement of these acts when they were then unknown to the electorate."[19]

It must again be remembered that the entire procedure was not an impeachment trial, but only a hearing, and that the rules usually governing such trials apply to a hearing only in so far as the individual conducting the hearing desires to be guided by them. On this particular occasion, Mayor Walker resigned from office before the decision of Governor Roosevelt was announced. It is impossible, therefore, to say that the mayor was held for the acts committed during his first term of office, even though his resignation was the result, as he maintained, of unfairness in connection with the hearing. Subsequent events seem to have lent endorsement to the governor's action, for Mayor Walker's failure to run for reëlection, while undoubtedly colored by political reasons, showed a disinclination, on the part of both the mayor and the party leaders, to make the fairness of the hearing an issue.

The doctrine was carried to an even further extent when William Sulzer, governor of New York, was impeached and found guilty of crimes committed, not during a previous term, but before he had taken the oath of office.[20] It was maintained in this case that the governor had, among other things, failed to make a correct and complete return of the sources of his campaign funds while running for the governorship. For these offenses, the court not only took jurisdiction but also removed the accused from office.

A disinterested observer might ask: "Even if this view is constitutionally sound, is it fair?" The lawyer in the defense of Judge Barnard maintained: "It is but fair, therefore, to infer that the intention was to confine the time to the term of office during which the offenses were alleged to have been committed; indeed, any other conclusion would lead to results which could not be sustained. For who can say but that the people knew of the misconduct and these offenses and elected the individual notwithstanding? True, an extreme case might be put of fraud committed on the last day of the term of office, to which office the individual might immediately be reëlected; yet who could say that this was not known to the people?"[21] The people, it would appear, passed upon the constitu-

[19] *Ibid.*, Aug. 31, 1932.

[20] *Proceedings of the Court for the Trial of Impeachment against William Sulzer* (Albany, 1913).

[21] Argument of Mr. Beach in the Barnard case. *Barnard Proceedings*, Vol. I, p. 159.

tional fitness of the judge when he was reëlected; "and if you review that judgment, you dishonor the cardinal principle upon which the perpetuity of our government rests."[22]

On the other hand, the purpose of impeachment is to remove a corrupt and unworthy official from office and to disqualify him from holding another public office of honor or trust. Unless action is taken, the individual might remain in office; and, as was contended in the Butler trial, "is it reasonable to hold that the mere swinging of a pendulum past a certain hour on a certain day is to determine whether he may be impeached?"[23] "If we hold to this doctrine," said Senator Gronna, "we should adopt a rule which, if followed in future cases, might make it impossible to secure the removal of a totally unfit officer if he succeeded in obtaining a reappointment or a reëlection to office before the facts of the offenses which he had previously committed became known."[24]

The fact that disqualification from future office-holding usually accompanies removal from office seems to substantiate this view, for the purpose of impeachment is not only to remove an unworthy and faithless official but also to make it impossible for him ever to hold another public office. In the Nebraska case of State v. Hill, where the court refused to uphold the impeachment of an ex-official, the opinion of the court stated that "the fact that the offense occurred in the previous term is immaterial."[25] Senator Owen is responsible for the statement that "the time he (the accused) committed the offense is immaterial, if such crimes demonstrate the gross unfitness of such official to hold the great offices and dignity of the people."[26]

Disqualification from office might appear to be a very severe punishment, for the only way the sentence can be removed is by the constitution of a state expressly delegating to a certain body or person the power of removing the punishment pronounced by the court of impeachment. An attempt was made by the legislature of Texas to remove the punishment inflicted by an impeachment court through passing an amnesty act which permitted ex-Governor Ferguson to qualify under it and thereby to remove his disqualification from holding office. The constitutionality of this act was tested when Mr. Ferguson asked the supreme court of Texas for a writ of mandamus which would compel the Democratic state executive committee to place his name on the Democratic ballot in the next primary. The act was held to be unconstitutional by the supreme court because the state constitution both expressly excepted impeachment from

[22] *Ibid.*, Vol. I, p. 190.

[23] Argument of Mr. Estebrook in the Butler case. *Butler Proceedings*, Vol. I, p. 159.

[24] Statement of Senator Gronna. *Archbald Proceedings*, Vol. XI, pp. 1652–1653.

[25] State v. Hill, 37 *Neb.* 80, p. 86.

[26] See *Archbald Proceedings*, Vol. XI, p. 1647.

the powers given to the legislature and excluded it from the pardon power there and elsewhere. "The convention, in excepting impeachment from the pardon power of the government, while at the same time providing the method of pardon in case of treason, evidently intended that an unfaithful official should not again be permitted to hold office in this state."[27]

Other states are not so harsh in their punishment, and Tennessee offers to the individual convicted by the impeachment court the possibility of a reinstatement, since in the state constitution itself there is the following provision: "The legislature now has, and shall continue to have, power to relieve from the penalties imposed, any person disqualified from holding office by the judgment of a court of impeachment."[28]

It would appear that any disqualification that might be pronounced by an impeachment court is permanent unless the constitution of a state expressly stipulates the method of removing the disqualification or else a constitutional amendment is adopted. While the punishment might be considered harsh, yet, as the Texas court said, "impeachment is used only in extreme cases. As a rule, the state is long-suffering before resorting to this constitutional remedy."[29]

In conclusion, we see that at times the impeachment of officials for offenses committed during a previous term in a different office has been sanctioned; at times, an officer has been impeached for offenses committed before his induction into office. To be sure, opinion upon these procedures remains divided. But, except in the instance of the Horton case, there has been virtually unanimous agreement that an officer may be impeached during a second term for offenses committed during his first one.

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Organization of the Executive Branch of the National Government of the United States; Changes between March 15 and June 30, 1934. In the December, 1933, issue of the REVIEW, pp. 942–955, appeared a tabular review of the changes in major units of the national government between March 4 and November 1, 1933. In the April, 1934, issue, pp. 250–254, appeared a supplementary list showing the changes between November 1, 1933, and March 1, 1934. The present list indicates the reorganization effected and new units created between March 15 and June 30, 1934. As in previous lists, mention is made of units only specifically authorized by law or established by the President under general authority vested in him.

[27] Ferguson v. Wilcox, 28 S. W. (2nd) 526, p. 534.
[28] Constitution of the State of Tennessee, Art. V, sec. 4.
[29] Ferguson v. Wilcox, 28 S. W. (2nd) 526, p. 534.