

An Earlier Attempt

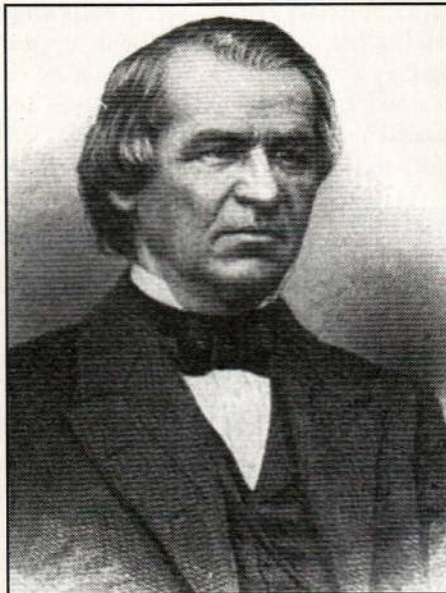
The Framers of our Constitution had confidence that the governmental system they fashioned would bring forth the best from among our people, and yet they knew that men are imperfect. They devised a method for removing a President from office in situations in which power or promises of material fortune had corrupted a man, and led him to commit “high crimes and misdemeanors.” The men who gave us our free republic regarded impeachment as a legal concept within a government of law, not a partisan political weapon to be employed as a cudgel against an opponent. It happens that in the history of our country only one President has been impeached. Unfortunately, that single instance represented a gross misuse of the legal process, as we shall see.

Contest of Wills

A tremendous struggle gripped the attention of the American people in the early months of 1868, a struggle the final outcome of which was to have significant effects on the destiny of the country, our form of government, and our social system. This contest pitted two powerful and particularly strong-willed men against one another: Andrew Johnson, the 17th President of the United States; and Thaddeus Stevens, a congressman from Pennsylvania.

Andrew Johnson became President due to the assassination of Lincoln in 1865. A Southerner by birth, he was also a Southerner in his sympathies, except in the matter of secession. At the time the Southern states withdrew from the union, Johnson was a senator from Tennessee and was the only Southern member of Congress to oppose secession and refuse to follow his state when it joined the Confederacy. He was nominated Vice-President on Lincoln’s ticket in 1864 and, on becoming President, followed a milder policy towards the defeated South. Insofar as character is concerned, it was acknowledged, even by some of his enemies, that Johnson possessed both courage and honesty.

Thaddeus Stevens, a man of considerable intelligence, was both a mesmerizing public speaker and an utter fanatic. The subject on which he was the most fanati-



Johnson: Faced partisan impeachment.

cal — and the subject which stamped its mark ineradicably on his personality, his outlook, his career, and even his countenance — was a deep and abiding abhorrence for the South, for the Southern way of life, and especially for the South’s leadership class. Galvanized in his efforts by a veritable torrent of blind rage, Stevens was the supreme partisan politician of his day and a Radical to the core.

After the War Between the States, as Andrew Johnson strove to re-create the American Union on the basis of forgiveness and moderation, Thaddeus Stevens publicly excoriated the defeated South as a “conquered province,” no longer part of the United States and no longer protected by the Constitution. In his judgment, Congress could do whatever it pleased with the South and with Southerners. Southerners who had fought for or supported the Confederacy were traitors, plain and simple, and had forfeited their citizenship and all legal protections. As far as he was concerned, military rule and summary justice were to be their lot.

Johnson envisioned his country in more or less the same way it had been understood from its founding. Stevens, in contrast, saw the country in terms of a centralized state, like the European nations. The Constitution, to quote his exact words, was to him nothing more than “a

worthless bit of old parchment.” A colleague once wrote that Stevens saw the Constitution as a bar of iron, to be forged or cut into whatever shape suited Stevens’ fancy at the moment. Thus, much of his legislation after the war was aimed at disenfranchising white Southerners and expropriating their land, while at the same time granting the vote to illiterate and easily manipulable ex-slaves, who were also to be awarded plots from the land confiscated from vanquished Confederates. Stevens, like all egalitarian revolutionaries, possessed definite totalitarian inclinations, and one could perceive, deep within his piercing eyes, the glint of a guillotine blade. And so it was that after Lincoln’s assassination the new President repeatedly stood athwart Radical plans for Southern reconstruction and thereby earned their undying enmity. Extremist legislation passed by the Radical-dominated Congress was vetoed by the President, though the vetoes were often overridden.

To humiliate Johnson, Stevens introduced various items of legislation to curtail certain important powers of the Presidency. One was the Tenure in Office Bill, which, among other things, stripped the President of the right to dismiss members of his own cabinet without express approval from the Senate. That bill eventually became law.

Meanwhile, Secretary of War Edwin M. Stanton, an ultra-Radical of the deepest dye, openly sought to sabotage Johnson and his policies. In the summer of 1867, Johnson sent Stanton a note requesting his resignation. Stanton defied the President, remaining in his office, while Johnson appointed a replacement. The end product of many months of wrangling over this issue was that in late February 1868, the House voted to bring the President to trial, to impeach him, using as its pretext his violation of the Tenure in Office Act in the Stanton affair.

Partisan Effort

The most salient feature of the machinations that led up to the impeachment of Andrew Johnson, and of the impeachment trial itself, was its virulent partisan political nature. Stevens himself spoke openly

of his belief in the superiority of the British parliamentary system, wherein a prime minister is completely accountable to the legislature for all policies and decisions, and can be dismissed from office as the result of a “no-confidence” vote. His wish was to destroy Johnson and create a majoritarian legislative dictatorship.

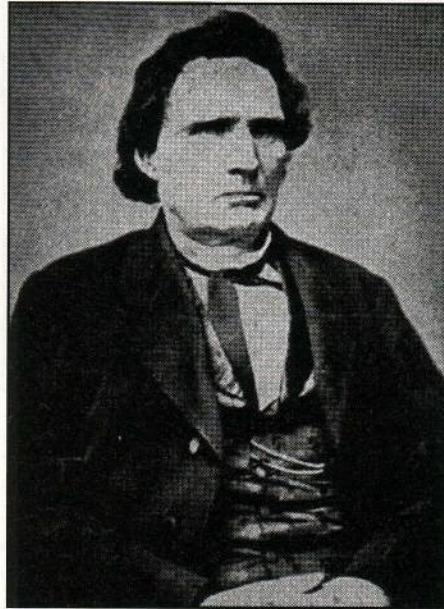
Many astute men of that time understood the ramifications of what was happening. Senator Lyman Trumbull, who intensely disliked President Johnson and his policies towards the South, nevertheless was horrified at the precedent that Johnson’s conviction would establish. He stated that, should the Senate vote to convict, “no future President will be safe who happens to differ with a majority of the House and two-thirds of the Senate on any measure deemed by them important. What then becomes of the checks and balances of the Constitution, so carefully devised and so vital to its perpetuity?... I tremble for the future of my country. I cannot be an instrument to produce such a result.”

Still others emphasized the paradox that the constitutionality of the extremely dubious Tenure in Office Act could not even be tested by a President without incurring risk of impeachment. We see, then, that impeachment in these circumstances was not a legitimate part of the constitutional process, which required that a President commit “high crimes and misdemeanors” to warrant conviction and removal from office, but rather a brazen assault on the integrity of the Presidency itself, and an assault on our system of government and our Constitution.

A special congressional committee was convened to frame articles of impeachment against Andrew Johnson. Early in 1868, the committee presented ten such articles. The first three involved the removal of Stanton in violation of the Tenure in Office Act; the next five dealt with an alleged conspiracy to deprive Stanton of office; the ninth article charged the President with intent to control War Department funds illegally; and the last accused Johnson of making speeches during the campaign of 1866 that were so written as to constitute a “high crime and misdemeanor.” Thaddeus Stevens himself composed and added an eleventh article alleging that Johnson had declared the acts of the 39th Congress not binding on him as President since that Congress lacked constitutional authority.

Extravagant rhetoric reigned supreme

in the 19th century, yet even with that in mind one is startled at the fearfully incendiary language used in this controversy. Stevens publicly expressed his desire that the President not only be impeached, but dragged away like a common criminal to a penitentiary. In a speech before the House, he called the President “a great malefactor” and “one who dares to be regarded as infamous by posterity,” and ended his diatribe with these words: “Unfortunate man! Thus surrounded, ham-



Stevens: Hatred of South drove effort.

pered, tangled in the meshes of his own wickedness — unfortunate, unhappy man, behold your doom!”

In another speech, Stevens called Johnson “the offspring of assassination” and said that any senator who voted for acquittal “would be tortured on the gibbet of everlasting obloquy.” The *New York World*, supporting the President, accurately characterized Stevens as a man “full of malignant passions,” and described one of his House speeches in these words: “Quivering with passion and exultation, this vindictive despot of the despotic majority tottered forward from his place, and shaking his finger above his head, defied the Senate to find any verdict but a verdict of guilty.” It is well known that, although the House did vote to impeach Johnson, the Senate failed to convict. The final vote in the Senate took place on May 26, 1868, with 35 voting for conviction and 19 for acquittal. Since conviction required a two-thirds majority, Johnson was saved by a single vote.

The charges against Johnson were

feeble and transparent. Few men doubted that Thaddeus Stevens’ fury at the President and the whole charade of the impeachment proceedings were based exclusively on political considerations. The Radicals desired a new kind of American Republic and a new kind of American Union. They sought a unitary democracy, identical in substance and spirit to that of the Jacobin radicals of France in the 1790s, with whom they shared many of their utopian ideals. Andrew Johnson, though certainly a flawed representative of the Old Republic, and inept in much of what he tried to do, nevertheless, in his heart, detested notions of the violent overthrow of the existing order, of ongoing social chaos, and of the tyranny that social chaos inevitably brings.

In less ferocious times, such a political contest would have been fought in the political arena. But the fanaticism of the Radicals drove them to attempt to use the delicate mechanism of our Constitution to remove what they believed to be one of the chief obstacles to their cravings for total power. Fortunately, several courageous senators of that time saw the larger picture and realized that short-term advantage meant long-term calamity, that the government of law given us by our ancestors would be undone and the United States would sink quickly to the level of “banana republics,” where governance oscillates frantically between impotent elected officials and petty despots, and where partisan politics and law are inextricably interwoven, transforming law into the tawdry plaything of politicians.

To date, no President has ever been convicted in an impeachment process. Nonetheless, should there be evidence that a chief executive has actually committed high crimes and misdemeanors, there must be no hesitation in impeaching him, convicting him, and removing him from office. The President is not an untouchable monarch, above the law. He is, first and foremost, a citizen, subject to the same laws as other citizens. The integrity of a republican form of government requires the swift removal of dishonest and debased men. Where care must be taken is to assure that the motives of the accusers and prosecutors are honorable (which in 1868 they clearly were not), that the process be carried out with dignity and without undue rancor, and that the man accused be truly blameworthy. ■

— FR. JAMES THORNTON