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Late Impeachment: An In-Depth Account of the Arguments at the Belknap Trial, by Thomas Berry (Part Four)

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Part 4: The Consequences of Late Impeachment

This is the fourth and final part of a series on the 1876 impeachment trial of former Secretary of War William Belknap. In each part, I have examined a different category of argument made at that trial on the question whether the Senate has constitutional jurisdiction to try and convict a former officer. In Part 1, I summarized the arguments at the trial based on constitutional text. In Part 2, I turned to the arguments based on the English practice of impeachment prior to the drafting of the U.S. Constitution. In Part 3, I recounted the arguments based on James Madison's notes from the Constitutional Convention on the framing of the impeachment clauses.

In this part, I turn to the final category of debate during the jurisdictional portion of the Belknap trial. These arguments centered around the implications and consequences of either permitting or rejecting the Senate's jurisdiction to try and convict former officers.

As a reminder, the Constitution provides for two possible punishments upon impeachment and conviction: both "removal from Office" and "disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States[.]" U.S. Const. art. I, § 3, cl. 7. In addition, the "removal clause" of Article II states that the "President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." U.S. Const. art. II, § 4.

Arguing against jurisdiction, Belknap defense counsel Montgomery Blair stressed that impeachment should be reserved for only when there is a pressing need to remove an unfit officer. Only then is it ever "necessary to put in motion the great power of the people, as organized in the House of Representatives, to bring him to justice." Congressional Record: Containing the Proceedings of the Senate Sitting for the Trial of William W. Belknap, Late Secretary of War 30 (Government Printing Office, Washington 1876). Because impeachment is uniquely assigned to the people's representatives in the legislative branch, Blair declared that "[t]he only theory upon which it can be justified is to enable the people, massed and organized in their representative houses, to assail their oppressors, armed with the power of the Executive and the patronage and prestige which that gives them." *Id.*

Defense counsel Matthew Carpenter reiterated that "the only purpose of impeachment is to remove a man from office" and therefore "when the man is out of office the object of impeachment ceases, and the proceedings must abate." *Id.* at 42. Carpenter concluded that "[t]here would be no further object to attain by the proceeding." *Id.*

Carpenter also warned that opening the door to late impeachment would allow cycles of political retribution. "If, in the revolutions which occur in politics, an administration is not only to be driven from power, but subjected to impeachment; if political overthrow is to be followed by criminal convictions and political disfranchisement [sic], at the hands of an incoming administration, which is to take its course in office, and in turn to be subjected to like disgrace and condemnation, it will not be long until impeachments, instead of being the nation's great effort to punish enormous offenders in the interests of the people, will be degraded, and only perform the office of the guillotine upon displaced statesmen." *Id.* at 45.

Arguing in favor of jurisdiction, the House impeachment managers focused on the importance of the disqualification punishment and the difficulty of completing a trial during an officer's tenure when offenses are committed near the end of that tenure.

Representative Scott Lord (D-NY) argued that disqualification was not an afterthought but was instead integral to the impeachment power. Rep. Lord declared that it "is the judgment of the Constitution, [that] there are cases where a man has shown such depravity that he ought to be disqualified for all the days of his life." *Id.* at 34. Lord pressed "that sometimes the people need protection against themselves," that "a far-sighted and ambitious man may, years after his crimes have been committed, ride into power on some wave of fanaticism or corruption," and that for those reasons "the Constitution wisely provided that a man thus guilty of disqualifying crimes should forever be disqualified[.]" *Id.*

Representative George A. Jenks (D-PA) pointed out that if jurisdiction ceased when an officer left office, then "the person impeached might, after you had gone through all the formalities of trial, then resign and bid you defiance and say, 'You cannot remove me from office; having no power to execute, you have no power to judge.'" *Id.* at 49. Rep. Jenks noted that impeachable offenses would then be "in the greater number of instances placed beyond the reach of" the Senate and that such a rule would "always leave it to the option of the criminal whether he will be punished or not[.]" *Id.* at 50.

Representative George F. Hoar (R-MA) similarly insisted that the power of the Senate "to interpose by its judgment a perpetual barrier against the return to power of great political offenders, does not depend upon the consent of the culprit, does not depend upon the accidental circumstance that the evidence of the crime is not discovered until after the official term has expired or toward the close of that term, but is a perpetual power, hanging over the guilty officer during his whole subsequent life, restricted in its exercise only by the discretion of the Senate itself and the necessity of the concurrence of both branches[.]" *Id.* at 57.

Rep. Hoar remarked that "[t]he exception of the judgment on impeachment from the operation of the power to pardon strongly shows the importance attached to that part of it which is to be of perpetual operation," *i.e.* the disqualification penalty. *Id.* at 61. Hoar argued that the importance of this penalty necessitated allowing late impeachment. "The people of the United States are entitled for their protection to a certain judgment. The guilty officer shall be removed, and, if the degree of his guilt warrant the greater condemnation, he shall be incapable of being restored. . . .

Now can this protective judgment ever be any the less necessary because the crime has not been discovered until the official term has expired[?]" *Id.*

Hoar also reminded the Senate that a rule against late impeachment would deprive it of even the power to hold a trial, which has value in and of itself apart from any punishment imposed. The resignation of an impeached officer would mean "neither Senate nor people nor President, to whom his claim for new confidence is presented, can have the advantage of any judicial trial, of any inquest, of any process for the discovery of concealed evidence, of any responsible accuser, in determining the question of his former guilt." *Id.* at 62.

Hoar directly confronted the defense argument "that it is a dangerous construction which leaves the public officer exposed to impeachment during his whole natural life." *Id.* at 63. Hoar asserted, rather, that "if he be guilty and deserve impeachment be ought to be so exposed." *Id.* Hoar assured that given the difficulty in obtaining both a majority of the House and two thirds of the Senate, impeachment would only be invoked if there were a legitimate fear that the impeached officer might serve in office again. "There is no likelihood that we shall ever unlimber this clumsy and bulky monster piece of ordnance to take aim at an object from which all danger has gone by." *Id.*

Representative J. Proctor Knott (D-KY) maintained further that the purpose of disqualification was not just to prevent a particular officer from re-entering government but also to deter future officers through the threat of the same punishment. Rep. Knott argued that the purpose of disqualification was "that other officials through all time might profit by [an officer's] punishment, might be warned by his political ostracism, by the everlasting stigma fixed upon his name by the most august tribunal on earth, to avoid the dangers upon which he wrecked, and withstand the temptations under which he fell, to teach them that if they should fall under like temptations they will fall, like Lucifer, never to rise again." *Id.* at 64. Given this purpose, Knott concluded that late impeachment was important "not that a single individual may be harassed, but that the government to which every citizen looks for protection may be kept pure, uncontaminated, and worthy of the confidence of those who are subject to its authority." *Id.*

Conclusion

To what extent should the 100 senators deciding the constitutionality of late impeachment today look back to the arguments of 1876? That is up to each senator to decide. But for what it is worth, those arguing in the Belknap trial were aware that the issue of late impeachment would arise again and that the question they were debating was one of lasting importance. Rep. Hoar warned the Senate that its decision on the question of jurisdiction, "like every decision affecting permanently the power and authority of the Senate, is to reach in its consequences to a period very far distant in the future." *Id.* at 63. Hoar observed that "[i]t adds much to the gravity of this inquiry when you recall the fact that although this will be the judgment of a legislative body, it will be the judgment of a legislative body clothed with judicial functions. If you determine that you cannot rightfully exercise the jurisdiction now invoked, your decision is binding on your successors for all time." *Id.* at 56.

Rep. Knott similarly predicted that the Senate's "determination, whatever it may be, will stand as a precedent through all coming time, or at least until the nature and character of our institutions shall have been completely transformed." *Id.* at 45. Knott closed his argument by noting that "I cannot forget that I stand in the presence of the most exalted tribunal known to the Constitution

of my country, sitting to determine one of the gravest questions ever submitted to a human court; not for this hour, but for all time; not for the weal or woe of this individual accused, but for aught I know for the good or ill of generations yet unborn." *Id.* at 68.

It is also striking, in reviewing the arguments made on both sides of the question in 1876, how much they sound like arguments that could be (and in some cases have been) made today. Summing up his remarks, Rep. Hoar explained that his arguments fell into four categories: "the history of the formation of the Constitution, the opinions of the best authorities, the letter of the instrument, and the grand object it was intended to accomplish[.]" *Id.* at 63. As this summary shows, the contents of the toolkit of constitutional interpretation have not much changed in the last 145 years. This gives the arguments made at the Belknap trial a surprising immediacy as the Senate now faces this difficult question once again.

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