OPINION OF HON. CHARLES SUMNER, OF MASSACHUSETTS, IN THE CASE OF THE IMPEACHMENT OF ANDREW JOHNSON, PRESIDENT OF THE UNITED STATES

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CHARLES SUMNER

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PRESIDENT OF THE UNITED STATES.

I voted against the rule of the Senate allowing Opinions to be filed in this proceeding, and regretted its adoption. With some hesitation I now take advantage of the opportunity, if not the invitation, which it affords. Voting "guilty" on all the articles, I feel that there is no need of explanation or apology. Such a vote is its own best defender. But I follow the example of others.

BATTLE WITH SLAVERY.

This is one of the last great battles with slavery. Driven from these legislative chambers, driven from the field of war, this monstrous power has found a refuge in the Executive Mansion, where, in utter disregard of the Constitution and laws, it seeks to exercise its ancient far-reaching sway. All this is very plain. Nobody can question it. Andrew Johnson is the impersonation of the tyrannical slave power. In him it lives again. He is the lineal successor of John C. Calhoun and Jefferson Davis; and he gathers about him the same supporters. Original partisans of slavery north and south; habitual compromisers of great principles; maligners of the Declaration of Independence; politicians without heart; lawyers, for whom a technicality is everything, and a promiscuous company who at every stage of the battle have set their faces against equal rights; these are his allies. It is the old troop of slavery, with a few recruits, ready as of old for violence—cunning in device, and heartless in quibble. With the President at their head, they are now entrenched in the Executive Mansion.

Not to dislodge them is to leave the country a prey to one of the most hateful tyrannies of history. Especially is it to surrender the Unionists of the rebel States to violence and bloodshed. Not a month, not a week, not a day should be lost. *The safety of the Republic requires action at once.* The lives of innocent men must be rescued from sacrifice.

I would not in this judgment depart from that moderation which belongs to the occasion; but God forbid that, when called to deal with so great an offender, I should affect a coldness which I cannot feel. Slavery has been our worst enemy, assailing all, murdering our children, filling our homes with mourning, and darkening the land with tragedy; and now it rears its crest anew, with Andrew Johnson as its representative. Through him it assumes once more to rule the Republic and to impose its cruel law. The enormity of his conduct is aggravated by his barefaced treachery. He once declared himself the Moses of the

colored race. Behold him now the Pharaoh. With such treachery in such a cause there can be no parley. Every sentiment, every conviction, every vow against slavery must now be directed against him. Pharaoh is at the bar of the Senate for judgment.

The formal accusation is founded on certain recent transgressions, enumerated in articles of impeachment, but it is wrong to suppose that this is the whole case. It is very wrong to try this impeachment merely on these articles. It is unpardonable to higgle over words and phrases when, for more than two years the tyrannical pretensions of this offender, now in evidence before the Senate, as I shall show, have been manifest in their terrible, heart-rending consequences.

IMPEACHMENT A POLITICAL AND NOT A JUDICIAL PROCEEDING.

Before entering upon the consideration of the formal accusation, instituted by the House of Representatives of the United States in their own name and in the name of all of the people thereof, it is important to understand the nature of the proceeding; and here on the threshold we encounter the effort of the apologists who have sought in every way to confound this great constitutional trial with an ordinary case at Nisi Prius and to win for the criminal President an Old Bailey acquittal, where on some quibble the prisoner is allowed to go without day. From beginning to end this has been painfully apparent, thus degrading the trial and baffling justice. Point by point has been pressed, sometimes by counsel and sometimes even by senators, leaving the substantial merits untouched, as if on a solemn occasion like this, involving the safety of the Republic, there could be any other question.

The first effort was to call the Senate, sitting for the trial of impeachment, a court, and not a Senate. Ordinarily names are of little consequence, but it cannot be doubted that this appellation has been made the starting-point for those technicalities which are so proverbial in courts. Constantly we have been reminded of what is called our judicial character and of the supplementary oath we have taken, as if a senator were not always under oath, and as if other things within the sphere of his duties were not equally judicial in character. Out of this plausible assumption has come that fine-spun thread which lawyers know so well how to weave.

The whole mystification disappears when we look at our Constitution, which in no way speaks of impeachment as judicial in character, and in no way speaks of the Senate as a court. On the contrary it uses positive language, inconsistent with this assumption and all its pretended consequences. On this head there can be no doubt.

By the Constitution it is expressly provided that "the *judicial power* shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish," thus positively excluding the Senate from any exercise of "the judicial power." And yet this same Constitution provides that "the Senate shall have the sole power to try all impeachments." In the face of these plain texts it is impossible not to conclude that in trying impeachments senators exercise a function which is not regarded by the Constitution as "judicial," or, in other words, as subject to the ordinary conditions of judicial power. Call it senatorial or political, it is a power by itself and subject to its own conditions.

Nor can any adverse conclusion be drawn from the unauthorized designation of court, which has been foisted into our proceedings. This term is very expansive and sometimes very insignificant. In Europe it means the household of a prince. In Massachusetts it is still applied to the legislature of the State, which is known as the General Court. If applied to the Senate it must be interpreted by the Constitution, and cannot be made in any respect a source of power or a constraint.

It is difficult to understand how this term, which plays such a part in present pretensions, obtained its vogue. It does not appear in English impeachments, although there is reason for it there, which is not found here. From ancient times Parliament, including both houses, has been called a court, and the House of Lords is known as a court of appeal. The judgment on English impeachments embraces not merely removal from office, as under our Constitution, but also punishment. And yet it does not appear that the lords sitting on impeachments are called a court. They are not so called in any of the cases, from the first in 1330, entitled simply, "Impeachment of Roger Mortimer, Earl of March, for Treason," down to the last in 1806, entitled, "Trial of Right Honorable Henry Lord Viscount Melville before the Lords House of Parliament in Westminster for High Crimes and Misdemeanors whereof he was accused in certain articles of Impeachment." In the historic case of Lord Bacon, we find, at the first stage, this title, "Proceedings in Parliament against Francis Bacon Lord Verulam;" and after the impeachment was presented, the simple title, "Proceedings in the House of Lords." Had this simplicity been followed in our proceedings, one source of misunderstanding would have been removed.

There is another provision of the Constitution which testifies still further, and, if possible, more completely. It is the limitation of the judgment in cases of impeachment, making it political and nothing else. It is not in the nature of *punishment*, but in the nature of *protection to the Republic*. It is confined to removal from office and disqualification; but, as if aware that this was no punishment, the Constitution further provides that this judgment shall be no impediment to indictment, trial, judgment, and punishment "according to law." Thus again is the distinction declared between an impeachment and a proceeding "according to law." The first, which is political, belongs to the Senate, which is a political body; the latter, which is judicial, belongs to the courts, which are judicial bodies. The Senate removes from office; the courts punish. I am not alone in drawing this distinction. It is well known to all who have studied the subject. Early in our history it was put forth by the distinguished Mr. Bayard, of Delaware, the father of senators, in the case of Blount, and it is adopted by no less an authority than our highest commentator, Judge Story, who was as much disposed as anybody to amplify the judicial power. In speaking of this text, he says that impeachment "is not so much designed to punish the offender as *to secure the State against gross official misdemeanors;* that it touches neither his person nor his property, *but simply divests him of his political capacity.* (*Story, Commentaries, vol.* 1, *sec.* 803.) All this seems to have been forgotten by certain apologists on the present trial, who, assuming that impeachment was a proceeding "according to law," have treated the Senate to the technicalities of the law, to say nothing of the law's delay.

As we discern the true character of impeachment under our Constitution we shall be constrained to confess that it is a political proceeding before a political body, with political purposes; that it is founded on political offences, proper for the consideration of a political body and subject to a political judgment only. Even in cases of treason and bribery the judgment is political, and nothing more. If I were to sum up in one word the object of impeachment under our Constitution, meaning that which it has especially in view, and to which it is practically limited, I should say *Expulsion from Office*. The present question is, shall Andrew Johnson, on the case before the Senate, be expelled from office.

Expulsion from office is not unknown to our proceedings. By the Constitution a senator may be expelled with "the concurrence of two-thirds;" precisely as a President may be expelled with "the concurrence of two-thirds." In each of these cases the same exceptional vote of two-thirds is required. Do not the two illustrate each other? From the nature of things they are essentially similar in character, except that on the expulsion of the President the motion is made by the House of Representatives at the bar of the Senate, while on the

expulsion of a senator the motion is made by a senator. And how can we require a technicality of proceeding in the one which is rejected in the other? If the Senate is a court, bound to judicial forms on the expulsion of the President, must it not be the same on the expulsion of a senator? But nobody attributes to it any such strictness in the latter case. Numerous precedents attest how, in dealing with its own members, the Senate has sought to do substantial justice without reference to forms. In the case of Blount, which is the first in our history, the expulsion was on the report of a committee, declaring him "guilty of a high misdemeanor, entirely inconsistent with his public trust and duty as a senator." (*Annals of Congress*, 15*th* Congress, 1797, *p.* 44.) At least one senator has been expelled on simple motion, even without reference to a committee. Others have been expelled without any formal allegations or formal proofs.

There is another provision of the Constitution which overrides both cases. It is this: "Each house may determine its rules of proceeding." The Senate on the expulsion of its own members has already done this practically and set an example of simplicity. But it has the same power over its "rules of proceeding" on the expulsion of the President; and there can be no reason for simplicity in the one case not equally applicable in the other. Technicality is as little consonant with the one as with the other. Each has for its object the *Public Safety*. For this the senator is expelled; for this, also, the President is expelled. *Salus populi suprema lex.* The proceedings in each case must be in subordination to this rule.

There is one formal difference, under the Constitution, between the power to expel a senator and the power to expel the President. The power to expel a senator is unlimited in its terms. The Senate may, "with the concurrence of two-thirds, expel a member," nothing being said of the offence; whereas the President can be expelled only "for treason, bribery, or *other high crimes and misdemeanors*." A careful inquiry will show that, under the latter words, there is such a latitude as to leave little difference between the two cases. This brings us to the question of impeachable offences.

POLITICAL OFFENCES ARE IMPEACHABLE OFFENCES.

So much depends on the right understanding of the character of this proceeding, that even at the risk of protracting this discussion, I cannot hesitate to consider this branch of the subject, although what I have already said may render it superfluous. *What are impeachable offences* has been much considered in this trial, and sometimes with very little appreciation of the question. Next to the mystification from calling the Senate a court has been that other mystification from not calling the transgressions of Andrew Johnson impeachable offences.

It is sometimes boldly argued that there can be no impeachment under the Constitution of the United States, unless for an offence defined and made indictable by an act of Congress; and, therefore, Andrew Johnson must go free, unless it can be shown that he is such an offender. But this argument mistakes the Constitution, and also mistakes the whole theory of impeachment.

It mistakes the Constitution in attributing to it any such absurd limitation. The argument is this: Because in the Constitution of the United States there are no common-law crimes, therefore there are no such crimes on which an impeachment can be maintained. To this there are two answers on the present occasion; first, that the District of Columbia, where the President resides and exercises his functions, was once a part of Maryland, where the common law prevailed; that when it came under the jurisdiction of the United States it brought with it the whole body of the law of Maryland, including the common law, and that at this day the common law of crimes is still recognized here. But the second answer is stronger still. By the Constitution *Expulsion from Office* is "on

impeachment for and conviction of treason, bribery, *or other high crimes and misdemeanors;*" and this, according to another clause of the Constitution, is "the supreme law of the land." Now, when a constitutional provision can be executed without superadded legislation, it is absurd to suppose that such superadded legislation is necessary. Here the provision executes itself without any re-enactment; and, as for the definition of "treason" and "bribery" we resort to the common law, so for the definition of "high crimes and misdemeanors" we resort to the parliamentary law and the instances of impeachment by which it is illustrated. And thus clearly the whole testimony of English history enters into this case with its authoritative law. From the earliest text-writer on this subject (*Woodeson, Lectures, vol.* II, *p.* 601) we learn the undefined and expansive character of these offences; and these instances are in point now. Thus, where a lord chancellor has been thought to put the great seal to an ignominious treaty; a lord admiral to neglect the safeguard of the seas; an ambassador to betray his trust; a privy councillor to propound dishonorable measures; a confidential adviser to obtain exorbitant grants or incompatible employments, or *where any magistrate has attempted to subvert the fundamental law or introduce arbitary power;* all these are high crimes and misdemeanors, according to these precedents by which our Constitution must be interpreted. How completely they cover the charges against Andrew Johnson, whether in the formal accusation or in the long antecedent transgressions to which I shall soon call attention as an essential part of the case nobody can question.

Broad as this definition may seem, it is in harmony with the declared opinions of the best minds that have been turned in this direction. Of these none so great as Edmund Burke, who, as manager on the impeachment of Warren Hastings, excited the admiration of all by the varied stores of knowledge and philosophy, illumined by the rarest eloquence, with which he elucidated his cause. These are his words:

> It is by this tribunal that statesmen who abuse their power are tried before statesmen and by statesmen, *upon solid principles of state morality. It is here that those who by an abuse of power have polluted the spirit of all laws can never hope for the least protection from any of its forms.* It is here that those who have refused to conform themselves to the protection of law can never hope to escape through any of its defects. (*Bond, Speeches on Trial of Hastings, vol.* 1 *p.* 4.)

The value of this testimony is not diminished, because the orator spoke as a manager. By a professional license an advocate may state opinions which are not his own; but a manager cannot. Representing the House of Representatives and all the people, he speaks with the responsibility of a judge, so that his words may be cited hereafter. In saying this I but follow the claim of Mr. Fox. Therefore, the words of Burke are as authoritative as beautiful.

In different but most sententious terms, Mr. Hallam, who is so great a light in constitutional history, thus exhibits the latitude of impeachment and its comprehensive grasp:

> A minister is answerable for *the justice, the honesty, the utility of all measures* emanating from the Crown, *as well as their legality;* and thus the executive administration is or *ought to be subordinate in all great matters of policy* to the superintendence and virtual control of the two houses of Parliament. (*Hallam, Constitutional History,* vol. 2, chap. 13.)

Thus, according to Hallam, even a failure in justice, honesty, and utility, as well as in legality, may be the ground of impeachment; and the administration should in all great matters of policy be subject to the two houses of Parliament—the House of Commons to impeach and the House of Lords to try. Here again the case of Andrew Johnson is provided for.

Our best American lights are similar in character, beginning with the Federalist itself. According to this authority impeachment is for "those offences which proceed from the *misconduct of public men,* or, in other words, from the abuse or violation of some public trust; and they may with peculiar propriety be deemed *political,* as they relate to injuries done immediately to society itself."

(No. 65.) If ever injuries were done immediately to society itself; if ever there was an abuse or violation of public trust; if ever there was misconduct of a public man; all these are now before us in the case of Andrew Johnson. The Federalist has been echoed ever since by all who have spoken with knowledge and without prejudice. First came the respected commentator, Rawle, who specifies among causes of impeachment "the fondness for the individual extension of power;" "the influence of party and prejudice;" "the seductions of foreign states;" "the baser appetite for illegitimate emolument;" and "the involutions and varieties of vice too many and too artful to be anticipated by positive law;" all resulting in what the commentator says are "not inaptly termed *political offences*." (Page 19.) And thus Rawle unites with the Federalist in stamping upon impeachable offences the epithet "political." If in the present case there has been on the part of Andrew Johnson no base appetite for illegitimate emolument and no yielding to foreign seductions, there has been most notoriously the influence of party and prejudice, also to an unprecedent degree an individual extension of power, and an involution and variety of vice impossible to be anticipated by positive law, all of which, in gross or in detail, is impeachable. Here it is in gross. Then comes Story, who, writing with the combined testimony of English and American history before him, and moved only by a desire of truth, records his opinion with all the original emphasis of the Federalist. His words are like a judgment. According to him the process of impeachment is intended to reach "personal misconduct, or gross neglect, or usurpation or habitual disregard of the public interests in the discharge of the duties of *political office;*" and the commentator adds that it is "to be exercised over offences committed by public men in violation of their public trust and duties;" that "the offences to which it is ordinarily applied are of a *political* character;" and that strictly speaking "the power partakes of a *political* character." (*Story's Commentaries, vol.* 2, § 746, 764.) Every word here is like an ægis for the present case. The later commentator, Curtis, is, if possible, more explicit even than Story. According to him an "impeachment is not necessarily a trial for crime;" "its purposes lie wholly beyond the penalties of the statute or customary law;" and this commentator does not hesitate to say that it is a "proceeding to ascertain *whether cause exists for removing a public officer from office;*" and he adds that "such cause of removal may exist where no offence against public law has been committed, as, where the individual has, from immorality or imbecility, *or maladministration, become unfit to exercise the office.*" (*Curtis on the Constitution, p.* 360.) Here again the power of the Senate over Andrew Johnson is vindicated, so as to make all doubt or question absurd.

I close this question of impeachable offences by asking you to consider that all the cases which have occurred in our history are in conformity with the rule which so many commentators have announced. The several trials of Pickering, Chase, Peck, and Humphreys exhibit its latitude in different forms. Official misconduct, including in the cases of Chase and Humphreys offensive utterances, constituted the high crimes and misdemeanors for which they were respectively arraigned. These are precedents. Add still further, that Madison, in debate on the appointing power, at the very beginning of our government, said: "I contend that the *wanton removal of meritorious officers* would subject the President to impeachment and removal from his own high trust." (*Elliot's Debates, vol.* 4, *p.* 141.) But Andrew Johnson, standing before a crowd, said of meritorious officers that "he would kick them out," and forthwith proceeded to execute his foul-mouthed menace. How small was all that Madison imagined; how small was all that was spread out in the successive impeachments of our history, if gathered into one case, compared with the terrible mass now before us.

From all these concurring authorities, English and American, it is plain that impeachment is a power broad as the Constitution itself, and applicable to the