Supplementary Material

Chapter 7: The Republican Era—Powers of the National Government

## **House Report on Expulsion** (1914)[1]

*Responding to a scandal reported in the press, the 63rd Congress launched an investigation of a member of the House of Representatives, James T. McDermott (Democrat, Illinois), and improper lobbying activities by the National Association of Manufacturers. An investigating committee reported its findings in December 1913 to the Judiciary Committee for further action. The investigative report largely cleared McDermott of the charges made in the press, but separately found that the congressman had improperly taken money from the liquor and pawnbrokers' lobbies to influence legislation regulating bars in the District of Columbia. McDermott resigned in the summer of 1914 before a censure resolution could be passed, but was returned to Congress by his constituents in the fall. With a finding that a wide range of interest groups were inappropriately involved in lobbying and campaign activities with numerous congressmen, the committee recommended substantive legislation to regulate lobbying rather than resolutions of censure. No significant legislation was adopted for another three decades.*

*The committee took up three possible ways of punishing House members or members of the public: expulsion, censure, and contempt charges. The U.S. Constitution provides for the possibility of expulsion, which removes a member of Congress from office in cases of "disorderly conduct" and a two-thirds vote in the chamber. The power to censure and hold in contempt are not explicit in the Constitution, but were understood to be "an implied power inherent in legislative bodies." The committee report endorsed a sweeping view of the expulsion power, contending that the power was completely discretionary, constrained by no significant substantive requirements, and required no due process other than a floor vote. A majority of the committee did not recommend using the expulsion power in this case, however.*

*Are there substantive standards that Congress must meet to expel a member? Are members entitled to a hearing to evaluate evidence before an expulsion vote? Can members be expelled for actions prior to the Congress (whether in an earlier Congress or in private life)? Could the House have renewed expulsion proceedings against Representative McDermott in the 64th Congress, after his new election? Could the House of Representatives have expelled the libertarian Ron Paul for voting against too many spending bills? Could the House have expelled Alcee Hastings, who was elected to Congress after having been impeached and removed from office when serving as a federal judge for accepting bribes? If Richard Nixon had returned to California after resigning the presidency and won election to the U.S. Senate in 1976, could the Senate have voted to expel him? Is expulsion better understood as punishment or as an effort to maintain the purity and public standing of the institution? Would it matter if the House included numerous members with criminal records or charges against them?*

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In the judgment of your committee the power of the House to expel or otherwise punish a Member is full and plenary and may be enforced by summary proceedings. It is discretionary in character, and upon a resolution for expulsion or censure of a Member for misconduct each individual Member is at liberty to act on his sound discretion and vote according to the dictates of his own judgment and conscience. This extraordinary discretionary power is vested by the Constitution in the collective

[1]Excerpt taken from Judiciary Committee, U.S. House of Representatives, *Charges against House Members and Lobby Activities*, H. Rept. 570, 63rd Cong., 2nd Sess. (1914).

membership of the respective Houses of Congress, restricted by no limitation except in case of expulsion the requirement for the concurrence of a two-thirds vote.

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While perfectly aware that there are and have always been two schools of thought on this question, your committee considers the principle enunciated and the views expressed by [Senator John Quincy] Adams in his admirable report [on the 1807 expulsion vote against Senator John Smith] as sound today, sustained by reason and common sense and by unbroken precedent for a hundred years. We submit and quote with approval the following extract from Mr. Adams's report:

> In examining the question whether these forms of judicial proceedings or the rules of judicial evidence ought to be applied to the exercise of that censorial authority which the Senate of the United States possesses over the conduct of its Members let us assume as the test of their application, either the dictates of unfettered reason, the letter and spirit of the Constitution or precedents domestic or foreign, and your committee believe that the result will be the same; that the power of expelling a Member must in its nature be discretionary, and in its exercise always more summary than the tardy process of judicial tribunals.
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> The power of expelling a Member for misconduct results, on principles of common sense, from the interest of the Nation, that the high trust of legislation should be invested in pure hands. When the trust is elective, it is not to be presumed that the constituent body will deposit it in the keeping of worthless characters. But when a man whom his fellow citizens have honored with their confidence on the pledge of a spotless reputation have degraded himself by the commission of infamous crimes, which becomes suddenly and unexpectedly revealed to the world, defective indeed would be that institution which would be impotent to discard from its bosom the contagion of such a member; which should have no remedy of amputation to apply until the poison has reached the heart.

Again quoting from Mr. Adams's report, we submit the following:

> By the letter of the Constitution, the power of expelling a Member is given to each of the two Houses of Congress, without any limitation other than that which requires a concurrence of two-thirds of the votes to give it effect.



We have quoted the above extracts from Mr. Adams's report because the views therein expressed were advanced and promulgated by men who were instrumental in establishing our independence in forming the Union and in framing the Constitution of the United States. . . . [W]e have failed to find in the numerous precedents that have arisen under this particular provision of the Constitution where either House of Congress has ever declaimed its power to deal summarily with a Member for flagrant misconduct. . . .

The question has been raised and discussed as to whether or not the House has the power to expel or punish a Member for misconduct in a preceding or former Congress of which he was also a Member.

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The following is an extract taken from the report of the investigating committee [on the possible expulsion of Representatives Oakes Ames and James Brooks in 1873]:

> . . . Has this House the power and jurisdiction to inquire concerning offenses committed by its Members prior to their election and to punish them by censure or expulsion? The committee are unanimous upon the right of jurisdiction of this House over the cases. . . .
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It will be observed that there is no qualification of the power [to expel members], but there is an important qualification of the manner of its exercise—it must be done "with the concurrence of two-thirds."

The close analogy between this power and the power of impeachment is deserving of consideration.

The great purpose of the power of impeachment is to remove an unfit and unworthy incumbent from office, and though a judgment of impeachment may to some extent operate as punishment, that is not the principal object. Members of Congress are not subject to be impeached, but may be expelled, and the principal purpose of expulsion is not as punishment, but to remove a Member whose character and conduct show that he is an unfit man to participate in the deliberations and decisions of the body and whose presence in it tends to bring the body into contempt and disgrace.

In both cases, it is a power of purgation and purification to be exercised for the public safety, and in the case of expulsion for the protection and character of the House. The Constitution defines the cause of impeachment, to wit: "Treason, bribery, or the other high crimes and misdemeanors." The office of the power of expulsion is so much the same as that of the power to impeach that we think it may be safely assumed that whatever would be a good cause of impeachment would also be a good cause of expulsion.

It has never been contended that the power to impeach for any of the causes enumerated was intended to be restricted to those which might occur after appointment to a civil office, so that a civil officer who had secretly committed such offense before his appointment should not upon detection and exposure be convicted and removed from office. Every consideration of justice and sound policy would seem to require that the public interest be secured. . . .

If this is so in regard to other civil officers, under institutions which rest upon the intelligence and virtue of the people, can it well be claimed that the law-making Representation may be vile and criminal with impunity provided the evidences of his corruption are found to antedate his election?

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. . . . In the judgment of your Committee, the power of the House to expel or punish by censure a Member for misconduct occurring before his election or in a preceding or former Congress is sustained by the practice of the House, sanctioned by reason and sound policy, and in extreme cases is absolutely essential to enable the House to exclude from its deliberations and councils notoriously corrupt men. . . .

[W]e have been dealing with the question merely as one of power, and it should not be confused with the question of policy also involved. As a matter of sound policy, this extraordinary prerogative of the House, in our judgment, should be exercised only in extreme cases and always with great caution . . . and should be invoked with greater caution where the acts of misconduct complained of had become public previous to and were generally known at the time of the Member's election. To exercise such power in that instance the House might abuse its high prerogative, and in our opinion might exceed the just limitations of its constitutional authority by seeking to substitute its own standards and ideals for the standards and ideals of the constituency of the Member who had deliberately chosen him to be their Representative. The effect of such a policy would tend not to preserve but to undermine and destroy representative government.

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VIEWS OF THE MINORITY [DISSENTING REPORT]

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Being convinced that Mr. McDermott has been guilty of gross misconduct, wholly inconsistent with his public trust and duty, the undersigned feel constrained to hold, under the precedents and the

laws of Congress and the testimony taken by the select committee, that the House should forthwith expel him.

The large purpose of any action to be taken in cases of this kind is not punishment of an individual, but the protection of the honor of the House, the maintenance of the confidence of the people in its integrity, and the preservation of its self-respect before the eyes of the world.

It is a low, a false, and a dangerous conception of congressional ethics, indefensible anywhere, except it may be, in certain half-civilized lands, that a member of a legislative body may run the gamut of all forms of misconduct if he does but carefully provide such explanations, evasions, shifts, and contrivances that when brought before an investigating committee there shall not be "that satisfactory character of evidence" to convict him beyond a reasonable doubt as if being tried for crime in a court of law. To just barely keep out of the penitentiary should not insure a Member a seat in Congress.

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. . . . This House will be judged [by the American people] by its worst Member, and rightly so, when it approves his misconduct. There is nothing that breeds disrespect for law and justice on the part of the masses of men like the lawlessness in high places, and especially when the lawmaker himself is flawless and the lawmaking body itself protects him in his high places. The cry of the initiative, the referendum, and the recall has but one meaning—increasing distrust of the loyalty, the integrity, and the justice of public servants. If every Member of this House were a McDermott, what would be our standing in the eyes of the people of our country and of the nations of the world? But we make his standard ours when, his misconduct known to us, we permit him to sit in his body to pass laws for the American people.

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