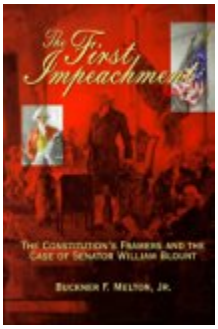
H-Net Reviews
in the Humanities & Social Sciences

Buckner F. Melton, Jr. *The First Impeachment: The Constitution's Framers and the Case of Senator William Blount.* Macon, Ga.: Mercer University Press, 1998. xiii + 344 pp. $40.00 (cloth), ISBN 978-0-86554-597-7.



Reviewed by Andrew S. Rotter (Department of History, University of California, Irvine)
Published on H-SHEAR (May, 1999)

Original Intent and Impeachment

Without question, events of the past year have sparked renewed interest in impeachment, a process, Buckner Melton tells us early in this book, which has often been perceived as trivial–"a pedestrian device for removing a handful of the throng of federal judges...when their conduct has gone beyond the pale" (p. viii). Coming at an opportune time, *The First Impeachment* is a careful study of Congress' first exercise of this power.

In 1797, the House of Representatives impeached Senator William Blount of Tennessee for plotting to invade Spanish-held Louisiana. Because the Blount episode occurred just ten years after ratification of the Constitution, Melton argues that it sheds light on the framers' intentions about impeachment. In effect, he undertakes two projects: a narrative of Blount's plot and impeachment, and an effort to "understand the nature, the scope, the extent of the federal impeachment power" (p. 6). His work is based primarily on Congressional debates about the Blount case, but also takes into account English and American antecedents and a brief survey of subsequent federal impeachments.

Melton provides a broad context for the story of Blount's plot and impeachment, situating it against the backdrop of 1790s politics and frontier and diplomatic history. He includes brief, but helpful, discussions of some of the political, economic, military and even cultural forces swirling about the Old Southwest, especially the influence of international relations and geopolitics. Most important was the fact that Spain held Louisiana. For Trans-Appalachian American settlers, especially in Tennessee, the Mississippi was the only practical trade route, and the lightly settled Spanish territory to the west attracted their interest, an allure which did not abate after Pinckney's Treaty in 1795 opened New Orleans to U.S. ships. This produced a number of designs on Spanish Louisiana. Melton notes that "[a]ccounts of the Southwest are rife with tales of plots, conspiracies, and intrigues, beginning even as America won its independence and continuing for a generation" (p. 79).

Blount was an important figure in the region. Born in North Carolina, during the Revolutionary War he served as a North Carolina militia paymaster, assemblyman, and member of the Continental Congress. Later, he was a delegate to the Constitutional Convention (although he infrequently attended its sessions). In 1790, after North Carolina ceded Tennessee to the federal government, Blount successfully lobbied President Washington for appointment as its territorial governor, and, upon Tennessee's admission to the Union in 1796, he became one of its first pair of senators.

Originally a Federalist, Melton attributes Blount's conversion to the Republican faction largely to Federalist "sacrifice" of western interests (pp. 76-77). By 1796, unable to implement plans to sell land to Europeans, Blount's finances were precarious, and Melton suggests that these difficulties induced him to plot "to wrest control of Louisiana from Spain in order to open the Mississippi Valley to settlers eager to purchase acres of his vast

land holdings" (p. 3). In the fall of 1796, a frontiersman named John Chisholm told Blount of his plan to attack Spanish-held Florida if the federal government would not protect western interests. Blount introduced Chisholm to British ambassador Robert Liston in order to solicit British backing. Liston did not commit his government, but wrote Britain's Foreign Secretary about Chisholm's plans. Unbeknownst to Blount, Britain declined to get involved.

Melton emphasizes that many of the details of Blount's conspiracy remain hidden (p. 95). The unfortunate result is that our knowledge of the plot remains sketchy. According to Chisholm's outline prepared later, the campaign was to consist of three prongs: a northern force would strike New Madrid on the west bank of the Mississippi; a middle force led by Blount would attack New Orleans; and the third, under Chisholm's command, would march on Pensacola. Blount's own carelessness led to the conspiracy's unwinding. He had returned to Tennessee in April 1797, when President Adams called a special session of Congress to begin the following month. Unable to meet with his co-conspirators, Blount wrote to several of them before returning to Philadelphia. One, James Carey, got cold feet and spilled the beans.

In early July, a Senate committee reported that Blount's actions related to his capacity as a senator and recommended that the chamber expel him. At the same time, the House unanimously impeached Blount, almost seven months before it drafted articles of impeachment. The following day, by a vote of twenty-five to one (Blount did not vote), the Senate expelled him. Blount soon took off for Tennessee, and, on July 10, both Houses adjourned until November.

Blount, who had already been elected to the Tennessee legislature, did not return for his trial which began in December 1798. He was, however, represented by Jared Ingersoll (who had been a delegate to the Constitutional Convention) and Alexander James Dallas, both prominent Philadelphia lawyers. Ingersoll and Dallas objected to the Senate's jurisdiction on several grounds including that senators were not "civil officers" and therefore were not subject to impeachment under Article II, Section 4 and that the charges concerned Blount's private conduct for which he could not be impeached.[1]

The trial's outcome was anti-climatic. On January 10, 1799, the Senate voted 14-11 to reject a motion to the effect that Blount was a civil officer, that his acts were of a public nature, and that, consequently, the Senate had jurisdiction. The next day, without specifying its grounds, but by the same vote, it upheld Blount's objection to jurisdiction, and the trial ended.

Congress definitively resolved few issues during the Blount impeachment. Even the basis for the Senate's determination that it lacked jurisdiction is unclear. Nevertheless, during the investigation of Blount's plot and the impeachment process itself, members of both the House and Senate debated quite a number of issues, several of which have remained subjects of scholarly attention and recently of popular interest as well.

The Blount case has much to tell us about the relationship between political nature of impeachment and its judicial character, and one of the strengths of *The First Impeachment* is Melton's exploration of the political aspects of the Blount case, both as a process to protect the state and as a partisan tool. With respect to the former, Hamilton characterized impeachment in *Federalist* no. 65 as a "NATIONAL INQUEST into the conduct of public men" and wrote that the subjects of impeachment "are those offenses which proceed ... from the abuse of some public trust." He described them as "political" in the sense that "they relate chiefly to injuries done immediately to the society itself" (p. 46). Although the evidence is not extensive, Melton finds support for this objective both in the statements of several Congressmen and in the fact that the House impeached Blount "without bothering to enunciate formally the grounds for its action." Thus, "[t]he obvious object of the impeachment itself (as opposed to the trial) was not Blount's protection but that of the nation at large..." (p. 147).

The factional politics of the Blount case are especially interesting in light of charges of partisanship surrounding Clinton's impeachment. In Blount's case, "each party sought to capitalize upon the conspiracy by blaming it upon the other faction" (p. 142). Generally pro-British, Federalists hoped to find a French connection, while Republicans, such as Albert Gallatin, wanted a full investigation of the conspiracy in the hope of discovering Federalist or British involvement. But partisanship did not permeate the entire process. In the House, both factions supported impeachment. Although Republican senators generally took positions which favored Blount while Federalists generally opposed him, especially on two key issues, senators did not vote strictly along party lines. Almost all voted against giving Blount a jury trial, and in the vote which ended the case, seven of eighteen Federalists joined a unified bloc of Republicans. Interestingly, Melton argues that, in light of the two-thirds vote required for conviction, in the Blount and subsequent

impeachments, "factional conflict acted to check the excesses of the process" (pp. 261-62).

The debates revealed another potential partisan use of impeachment. Some Federalists argued for what Melton calls "universal impeachment," maintaining that the Constitution does not restrict who may be impeached and that Congress might even impeach private persons and disqualify them from holding office in the future.[2] Melton points out that such a broad construction might have turned impeachment into "an unchecked partisan tool" (p. 183). In the Blount case, Republicans opposed this interpretation, but subsequent events proved that they were not adverse to deploying impeachment for partisan ends. After Republicans took control of both the executive and legislative branches in 1801, they sought to use that power "in an attempt to wrest the judicial branch from the Federalists' grip" (pp. 237-38), most notably in the case of Samuel Chase.

These political functions help distinguish impeachment from other judicial proceedings. The Constitution says almost nothing about impeachment procedure, and several issues in the Blount case suggest that the majority of congressmen did not view impeachment strictly as a criminal proceeding with its attendant protections for defendants. For example, the Senate tried Blount despite his absence (although he was represented by counsel). A second and more important illustration is the Senate's debate over whether Blount was entitled to a jury (other than the Senate itself). In a nutshell, the argument for a jury trial was that Article III, Section 2 of the Constitution required that "[t]he trial of all Crimes, except in Cases of Impeachment, shall be by Jury" while the Sixth Amendment omits the impeachment exception, providing that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." That omission, Senator Henry Tazewell argued, implicitly revoked the impeachment exception in Article III. After considerable debate, the Senate rejected Tazewell's position, although the deciding factor in its vote is not clear. Melton concludes that "[e]ither the senators felt that impeachment was not a criminal process, or that ... the Sixth Amendment provision did not nullify the Article III clause. If the outcome rested on the latter grounds, then it said nothing about other criminal provisions in the Bill of Rights; if it rested on the former reason, then it was far broader in its ramifications, potentially applying to the other criminal clauses as well" (pp. 180-81). "At the very least," he concludes, "the outcome of the jury debate creates a considerable presumption that impeachment is not a process to which constitutional standards of regular criminal procedure apply" (p. 189).

Another such issue is whether only criminal conduct is impeachable. Some Federalists maintained that Blount's letter to Carey evidenced a crime, and criminal charges were filed but not prosecuted. Others, such as Federalist Congressman Samuel Sitgreaves (who led the charge against Blount in the House) maintained that impeachment was intended to reach cases not cognizable in the courts. The five articles of impeachment do not resolve this issue. The first accused Blount of conspiring to violate the Neutrality Act, which prohibited organizing a military expedition within U.S. territory aimed at a foreign country with which the United States was at peace. Melton points out that, technically, Blount's conduct did not violate the Act, which outlawed only actually embarking on such an expedition. Article 2 charged that Blount violated Pinckney's Treaty by inciting Indians to attack Spain. In Article 3, the House cited Blount's efforts to undermine the influence of the government's Indian agent, while Article 4 charged that he attempted to induce Carey to breach his duties as a government interpreter for the Cherokees. Finally, Article 5 concerned Blount's attempts to "foment discontents and disaffection" among the Cherokees. Melton points out that none of this was clearly criminal (pp. 156-59), and the fact that each article also accused Blount of acting "contrary to the duty of his trust and station as a Senator of the United States" (pp. 159, 267-71) suggests that the House did not consider a criminal act to be a prerequisite to impeachment. On the other hand, he points to several factors which complicate that interpretation, including the then-undecided issue of whether there were federal common law crimes and whether federal criminal law incorporated customary international law (pp. 157-58).

I have discussed these issues in some detail as examples of the rich content of the official records and newspaper reports of the House and Senate debates which Melton analyzes. Beyond those directly relating to impeachment, Melton also argues that examination of the Blount impeachment process sheds light on other Constitutional issues including the scope of Congressional power (e.g., the extent of Congress' investigatory power), the nature of civil-military relations (Congress used military officers to arrest civilians and search their property during its investigation), the relationship between the House and Senate (e.g., whether the Senate could unilaterally adopt the oath which the Constitution requires senators to take in an impeachment trial or whether both branches of Congress must concur in the form of that

oath), the possible existence of "a supreme judicial law of Congress that lay beyond the cognizance of both state and federal courts," and whether international law is incorporated into the American constitutional system.

Unfortunately, the Blount case did not resolve most of these issues, some of which were not even explicitly raised in the debates. Nor did later impeachments. The Epilogue quickly traces the post-Blount history of federal impeachments, which helpfully gives a broader historical perspective and explains how later impeachments dealt with some of the same issues. Also helpful both for rounding out the picture and for facilitating further research and reading is an annotated bibliography, organized by topics (e.g., the Old Southwest, Blount), and by types of sources (e.g., newspapers, government publications, secondary). Melton includes a sentence or two describing each source, often commenting on matters such as its usefulness or accuracy.

If, as Melton tells us early on, "the Blount impeachment accomplished nothing" (p. ix), why is it important? Records of the Convention and ratification debates shed some light on the framers' views on impeachment, but do not give definitive guidance on many others. Given this record, Melton argues that the Blount case helps reveal the framers' intent about the nature, scope, and extent of the federal impeachment power, especially because "many of the men who spoke or wrote about [the issues raised by the case] during the course of Blount's impeachment had served in the Philadelphia Convention or one of the state ratifying conventions" (pp. x, 21). He begins by discussing doctrines of constitutional and statutory interpretation, focusing on those which seek to ascertain lawmakers' intent. Melton has some helpful insights about how we might go about understanding the framers' intentions and reasons for doing so, and non-lawyers and historians unfamiliar with constitutional history and interpretation will likely benefit from Melton's introduction to the subject and the issues it raises.

Melton recognizes, but does not fully engage, attacks on original intent doctrine. His defense of originalism rests, not so much on an argument that originalism is, in theory, the appropriate method for interpreting the Constitution, but on its usefulness both in litigation and for historical understanding. For example, he argues that "the ideal of an objective standard has no doubt exercised a considerable influence over development of constitutional and legal doctrine for generations.... As any inferior court judge striving to avoid reversal on appeal, or any attorney whose case depended on arguing the plain or original meaning of an authority would remind us, it still does, for better or for worse" (p. 16). The second prong of Melton's utility argument is historical–"Its best function, perhaps, is to provide a point of departure. It is a benchmark by which to measure modern understanding of an ancient document, so that we may know when we are changing it, as well as knowing when and how that rule needs changing" (p. 17). He argues that, through "an originalist approach," "we can seek to gain a better understanding of the ideas of those who drafted, debated, and ratified the Constitution's impeachment clauses" (p. 21).

Although he advises readers that "[t]his book is concerned primarily with the issue of American federal, or national, impeachment, as opposed to state practices" (p. 5 n.12), Melton acknowledges that impeachment was "a process of which a number of delegates to the Philadelphia Convention had direct experience" and that "[a]nother source of doctrinal influence was impeachment's colonial and early state history" (p. 35). Yet he devotes only three pages to impeachment during the colonial period (pp. 31-33) and just a couple to the states' experiences from 1776 to 1787 (pp. 33-34), less than the attention given English precedents. Melton relies heavily on the work of Hoffer and Hull[3], which he describes as the "best and most extensive work" on these periods (p. 35). But, given the project of shedding light on the *framers'* understandings, a fresh look seems warranted especially in light of his recognition that "only a few scholars have paid any attention to the pre-1787 American experience" (p. 35).

Moreover, the extent to which the Blount case sheds light on the framers' intent is not clear. Melton's analysis of the Congressional debates itself does not particularly highlight those who had been delegates to the Constitutional Convention, and we do not learn much about what the surviving framers had to say (for example) in their correspondence about Congressional interpretation of their work. (One important exception is Madison's letter to Jefferson, in which he rejected Tazewell's arguments for a jury trial, writing that his "impression" "has always been that impeachments were somewhat sui generis, and excluded the use of Juries" [p. 181].) Nor did those framers who participated in the Blount case invoke the authority of authorship. In fact, in Ingersoll's case, Melton carefully points out that Ingersoll appeared as an advocate and did not "expressly refer to any inside knowledge that he might have possessed of the Constitutional Convention's deliberations" (p. 219). In addition,

beyond the fact that a number of delegates to the Constitutional Convention and others who took part in the ratification process were still on the scene, Melton does not adequately explain why we can assume that the positions which they or others took reflect the framers' views when they drafted the Constitution, especially given the divisions in Congress on a number of issues. Indeed, the difficulty in determining what the framers intended is revealed by the fact that, on two important issues in the Blount case–the right to a jury trial and whether senators were subject to impeachment–those who participated in the Philadelphia Convention or in the ratification debates appear to have said next to nothing about what they, individually or collectively, intended. (And the latter issue is one about which Melton found a fair amount of evidence in the participants' notes of the Philadelphia Convention.)

This suggests that, only a decade after the drafting and ratification of the Constitution, the framers' intent (individually and collectively) had become murky or that, with respect to at least some issues, even the first exercise of the impeachment power raised issues which the framers had not carefully considered or anticipated. As a result, the story of Blount's impeachment becomes less a window on the framers' intent and more a study of congressional interpretation and definition of the impeachment power and process–certainly important objectives, but not the principal one offered.

In fact, there is much in this book which speaks to the Blount case as a precedent, although not in the sense that it is *stare decisis*, for as Melton aptly points out, "almost no controlling authority on any question of impeachment exists" (p. 6). Especially in light of courts' reluctance to intervene in the impeachment process, let alone overturn convictions, which Melton discusses in his Epilogue, "[f]or now ... the question of interpretation seems to be up to Congress" (p. 20). In the absence of judicial oversight, Melton recommends that "Congress should provide for some degree of procedural and substantive protections in the impeachment process itself" and that "[a] premise of the present work is that guidance such as this is at least useful, at most necessary, and at best–without the aid of serious scholarly research–difficult" (p. 20). In light of all this, it is not clear why he placed such emphasis on original intent as a justification for the project.

Moreover, whether we consider the Blount case to serve as a means to understand the framers' intentions or as a "precedent" revealing understanding of the impeachment process in the early republic, it seems important to keep in mind that Blount was not the only federal official impeached during this period. In 1803, the House impeached (and the Senate convicted) Judge John Pickering; in March 1804, it impeached Supreme Court Justice Samuel Chase. Melton notes similarities between both of these cases and the Blount impeachment (pp. viii, 238-39). Although he clearly wants to stick close to Blount's story, it seems that a sample of three cases closely related in time might give us a better understanding of the framers' intentions or the early interpretation of the impeachment power than the Blount case standing alone.

What then are the lessons that Melton draws from the Blount case? "The first main characteristic ... is the instinctive emotional response in Congress and among the public that gave rise not only to Blount's impeachment, but to his expulsion and the criminal proceedings against him as well" (p. 257). This, along with the fact that the House impeached Blount half a year before it drafted charges against him, reflects that the framers' generation viewed the accusation process as "a spontaneous, instinctive reaction to the defendant's perceived wrongdoing" (pp. 257-58), a "clamor" which he traces back to early English impeachments. In contrast, Melton found that the Senate acted to check the House's speedy, emotional reaction. In addition, as discussed above, the absence of at least some of the protections afforded criminal defendants distinguishes impeachment from criminal proceedings, as does its partisan aspect (p. 258). Finally, he argues that the case's outcome, whether predicated on the understanding that senators are not subject to impeachment or that Blount was no longer a senator, suggests that the Senate accepted limits on its impeachment jurisdiction and rejected the theory of universal impeachment advocated by some Federalists (p. 260).

Written in a lively style, this is a book which historians, constitutional scholars, lawyers, and lay readers will likely enjoy and find useful, not only for its account of the Blount case, but also for what it reveals about the impeachment process and doctrine, including several issues about which many of us have argued during the past year.

Notes

[1]. Article II, Section 4 states "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."

[2]. Article I, Section 3, clause 7 states "Judgment in

Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States…."

[3]. Peter Charles Hoffer and N.E.H. Hull, *Impeachment in America, 1635-1805* (New Haven, Conn.: Yale University Press, 1984).

If there is additional discussion of this review, you may access it through the network, at:

https://networks.h-net.org/h-shear/

Citation: Andrew S. Rotter. Review of Melton, Buckner F., Jr., *The First Impeachment: The Constitution's Framers and the Case of Senator William Blount.* H-SHEAR, H-Net Reviews. May, 1999.

URL: http://www.h-net.org/reviews/showrev.php?id=3094