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The Impeachment Process: The Constitution and Historical Practice

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KEY TAKEAWAYS

America's Founders did not provide for impeachment as a partisan political weapon or as a response by Congress to a President's policies with which they disagree.

The impeachment of President Andrew Johnson shows how the impeachment power can be misused in this way.

Instead, impeachment is a remedy for serious misconduct by the President and other federal officials that renders them unfit for office.

Introduction

The discussion and debate about impeachment occurring in the U.S. House of Representatives and elsewhere are plagued with confusion over this rarely exercised procedure. This serious and important part of our system of government should be informed by its constitutional requirements and historic practices of Congress.

Impeachment refers to the process for removing public officials for serious misconduct. With roots in 14th-century England, the U.S. Constitution provides: "The President, Vice President and all civil Officers of the United States, shall be removed from Office upon Impeachment for and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."[1]

Special Counsel Robert Mueller III's report on Russian interference in the 2016 presidential election,

released in March 2019, observed that "Congress may apply the obstruction laws to the President's corrupt exercise of the powers of office."[2] This observation ignited an "impeachment frenzy,"[3] with political activists,[4] commentators, and Members of Congress debating whether, when, and why to pursue impeachment.

This was not, however, the first time that President Donald Trump's critics had talked about impeachment. In fact, some House Democrats began calling for President Trump's impeachment less than two weeks after he took office[5] and introduced a resolution of impeachment on July 12, 2017.[6] In 2018, news organizations began polling Americans about the issue,[7] *Slate* launched its "Impeach-O-Meter,"[8] and many Democrats made the issue part of their 2018 campaign strategy.

In fact, resolutions to impeach presidents or to investigate them for possible impeachment have been filed in the House of Representatives since President John Tyler in 1843.[9] While the House has actually impeached two presidents—Andrew Johnson in 1868 and Bill Clinton in 1999—neither was convicted by the Senate and, therefore, both stayed in office.

This *Legal Memorandum* examines the background of impeachment and its practice in the American context, focusing on three issues: who may be impeached, what conduct is impeachable, and how impeachments are handled by Congress.

Impeachment Background

In providing for impeachment, America's Founders looked to Great Britain,[10] where Parliament first enacted an impeachment statute in 1399[11] and used it for the next four centuries. English impeachment had a broad scope; Parliament could impeach any person for any crime or misdemeanor and "was penal in nature, with possible penalties of fines, imprisonment, or even death."[12] Even in England, though, impeachment was typically "used in individual cases to reach offenses, as perceived by Parliament, against the system of government."[13] Many impeachment charges "involved abuse of official power or trust."[14]

The "constitutional meaning"[15] of the phrase "high Crimes and Misdemeanors" has a "special historical meaning different from the ordinary meaning of the terms 'crimes' and 'misdemeanors.'"[16] It is a "category of offenses that subverted the system of government."[17] For more than four centuries, it covered "a wide range of criminal and non-criminal offenses against the institutions and fundamental principles of English government."[18]

In America, both colonial governments and state constitutions[19] considered impeachment to be "a constitutional remedy to address serious offenses against the system of government."[20] They "followed the British pattern of trial before the upper legislative chamber on charges brought by the lower house."[21]

As the Constitution's language shows, impeachment is not a criminal process, such as the prosecutions carried out by the U.S. Department of Justice. Instead, it is the "first step in a remedial process—removal from office and possible disqualification from holding future office. The purpose of impeachment is not personal punishment; its function is primarily to maintain constitutional government."[22]

Who May Be Impeached

When the Constitution's drafters met in Philadelphia in 1787, they fit impeachment into a system that separated government power into three branches, with checks and balances among them.[23] They considered impeachment to be a way for Congress to check the President and, therefore, "focus[ed] principally on [impeachment's] applicability to the President."[24] During the constitutional convention, James Madison argued that providing for impeachment is "indispensable...for defending the Community [against] the incapacity, negligence or perfidy of the [President]."[25]

The phrase "all civil officers of the United States" refers to "those appointed by the President" and is "broad enough to include all [those] who hold their appointment from the Federal government."[26] Because a Member of Congress is not a "civil Officer,"[27] the Senate ignored the impeachment of Senator William Blount of Tennessee in 1799, expelling him instead.[28]

Which Offenses Are Impeachable

The question of what constitutes an impeachable offense may be approached in two different ways. The political approach was offered by House Minority Leader Gerald Ford (R–MI), who led the effort to impeach Supreme Court Justice William Douglas. On April 15, 1970, he said: "What, then, is an impeachable offense? The only honest answer is that an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history."[29]

One writer addressed this issue differently almost a century earlier, just prior to the House impeaching President Andrew Johnson. While

"the House must judge for what offenses it will present articles, and the Senate decide for what it will convict," he wrote, "it does not by any means follow that therefore either the House or the Senate can act arbitrarily, or that there are not rules for the guidance of their conduct."[30] That guidance comes from the history of impeachment and the understanding of America's Founders regarding the impeachment standard they put in the Constitution.

According to the Justice Department's Office of Legal Counsel, one "fundamental issue is whether a 'high crime or misdemeanor' must be a criminal offense."[31] The answer is "no." This phrase is a term of art that "must be construed, not according to modern usage, but according to what the Framers meant when they adopted [it]."[32] From the English experience, the Framers understood that impeachable misconduct is "not necessarily limited to common law or statutory derelictions or crimes."[33]

In other words, criminality is not necessary for conduct to be impeachable. Rather, impeachment is "more designed to protect the public interest than to punish the person impeached."[34] The Framers "intended impeachment to be a constitutional safeguard of the public trust."[35]

While this concept of impeachment was not in dispute, the Constitution's Framers still had to choose the right language to express it. Professor Keith Whittington of Princeton University notes the challenge: "A narrow reading of the [Impeachment] Clause risks making the impeach power inflexible and unable to respond to unanticipated bad behavior on the part of government officials. A broad reading of the Clause risks creating a partisan weapon that can be used by legislators to undermine the independence of other government officials."[36]

The Constitutional Convention "came to its choice of words describing the grounds for impeachment after much deliberation."[37] It first approved broad language allowing impeachment for "mal-practice or neglect of duty,"[38] while subsequent committee drafts narrowed the language from "treason, bribery, or corruption" to "Treason, or bribery" alone.[39]

Virginia delegate George Mason thought this would "not reach many great and dangerous offenses," such as "attempts to subvert the constitution,"[40] and suggested adding "mal-administration," a term found in several state constitutions.[41] James Madison argued that "so vague a term would be equivalent to a tenure during the pleasure of the Senate."[42] The convention settled on the language, used often in English impeachments, that we see today: treason, bribery, or other high crimes and misdemeanors.

Professor John McGinnis examined the development of this provision during the Constitutional Convention and concluded that the "decision not to permit impeachment on the basis of maladministration is wholly

consistent with authorizing it on the basis of serious objective misconduct that bears on the official's fitness for office."[43]

In *The Federalist No. 65*, Alexander Hamilton confirmed that this category includes "those offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself."[44]

The fact that criminality is not required for conduct to be impeachable, while consistent with the historical purpose of impeachment, makes impossible a catalog or checklist of impeachable offenses. Each impeachment case is fact specific. There have, however, been attempts to organize past impeachments into categories.

In 1974, following President Richard Nixon's resignation, the House Judiciary Committee published a report on the constitutional grounds for impeaching a President. This report concluded that American impeachments fell into three categories:[45]

1. Exceeding the powers of the office in derogation of those of another branch of government;[46]

2. Behaving in a manner grossly incompatible with the proper functions and purpose of the office;[47] and

3. Employing the power of the office for an improper purpose or personal gain.[48]

The Congressional Research Service has also attempted to summarize or describe conduct that may be impeachable. One report concludes: "Where the person to be impeached is the President or an executive officer, conduct having criminal intent, serious abuses of the power of the office involved, failure to carry out the duties of that office, and, possibly, interference with the Congress in an impeachment investigation of the President or other executive official may be enough to support an article of impeachment."[49]

Based on "the lessons of text and structure" as well as "precedent and history,"[50] Professor Akhil Amar examined the Constitution's impeachment standard and suggested asking whether the alleged misdeeds are "truly as malignant and threatening to democratic government as are treason and bribery" and "justify nullifying the votes of millions of Americans."[51]

When they drafted the Constitution, America's Founders did not provide for impeachment as a partisan political weapon or as a response by Congress to a President's policies with which they may disagree. That is what elections and the ordinary political process are for. Instead, impeachment is a remedy for serious misconduct by the President and other federal officials that renders them unfit for office.

The impeachment of President Andrew Johnson shows how the impeachment power can be misused in this way. Radical Republicans in Congress disagreed with Johnson's plan to implement President Abraham Lincoln's conciliatory policies towards the Southern states. In 1867, they passed the Tenure of Office Act, which unconstitutionally prohibited Johnson from removing executive branch officials without the permission of the Senate. The House impeached Johnson when he ignored the law and replaced Secretary of War Edwin Stanton (an ally of the Radical Republicans) with Ulysses S. Grant. The impeachment articles claimed that even Johnson's speeches amounted to "high Crimes and Misdemeanors."

Historians "condemn the [Johnson] impeachment process as rash, reckless, and unwarranted."[52] Congress improperly characterized Johnson's legitimate decisions as President, with which House Members disagreed, as impeachment offenses. And, with rhetoric reminiscent of that heard in Washington today, Radical Republicans claimed that Johnson was a "wild-eyed dictator bent on overthrowing the government."[53]

This distinction is critical because grassroots political activists are pushing a much more partisan approach to determining what conduct is impeachable by including policies or decisions with which they disagree. The group "Need to Impeach," for example, cites President Trump's pardon decisions and speculation about his personal communication style and process of decision making.[54] Writing in *The Atlantic*, an impeachment advocate includes President Trump's criticism of the press and firing of Attorney General Jeff Sessions[55] as "an attack on the very foundations of America's constitutional democracy" and, therefore, potentially impeachable offenses—and further suggests that the "process of impeachment can also *surface* evidence" warranting impeachment.

This approach is clearly at odds with the nature of impeachment as it was practiced in England and understood by those who drafted and ratified the Constitution, as well as incompatible with the republican form of government guaranteed by the Constitution. It would allow 285 members of Congress—a simple House majority and two-thirds of Senators—to remove a duly elected President for partisan reasons or over matters of style, no matter what his margin of victory in the last election.

The Impeachment Process

The Constitution gives the "sole Power of Impeachment" to the House of Representatives.[56] Impeachment proceedings begin with the presentation of charges or allegations, which typically occur when a House Member introduces a resolution or a memorial, or a resolution to authorize an impeachment investigation.[57] An impeachment resolution is similar to a criminal indictment by a grand jury in that it is a list of unproven accusations that a federal official has engaged in actions that warrant his impeachment. An impeachment actually occurs when the House, by a simple majority, adopts such a resolution.

The House has adopted 19 of the more than 60 resolutions of impeachment introduced since America's founding.[58] Even though the Framers focused almost exclusively on the President in their debate over impeachment at the Constitutional Convention, 15 of those impeached officials have been judges, including Supreme Court Associate Justice Samuel Chase in 1804.[59] Consistent with the English experience and the understanding of America's Founders, at least 11 of these 19 impeachments included articles alleging noncriminal misconduct.[60] Put differently, less than one-third of the articles presented in those impeachments "explicitly charged the violation of a criminal statute."[61]

Since the primary sanction following conviction is removal from office, resignation by the official terminates the case at whatever stage in the process it occurs. President Richard Nixon, for example, resigned in 1974 before the House voted on impeachment articles approved by the Judiciary Committee;[62] U.S. District Judge Mark Delahay resigned in 1873 after impeachment by the House but before his Senate trial began; U.S. District Judges George English in 1923 and Samuel Kent in 2009 resigned in the midst of their Senate trials.[63]

While the Constitution separately gives the "sole Power to try all Impeachments"[64] to the Senate, it is not required to act on the articles of impeachment or hold a trial. The Senate has done so for 16 of the 19 officials impeached by the House. Eight of those trials, all of them involving federal district court judges, resulted in convictions.[65] The Senate separately voted to disqualify three of those convicted judges from holding future federal office.[66]

The Senate adopted specific rules for conducting impeachment trials before the trial of President Andrew Johnson in 1868.[67] Prior to 1934, impeachment trials were conducted before the full Senate. However, the 1933 trial of Judge Harold Louderbeck "lasted for 76 of the first one

hundred days of President Franklin D. Roosevelt's first term, one of the busiest legislative periods in American history."[68] One of the House managers complained that "for ten days we presented evidence to what was practically an empty chamber."[69] Judiciary Committee Chairman Henry Ashurst (D–AZ) offered Senate Resolution 242 on May 10, 1934, allowing the Senate to "appoint a committee of senators to receive evidence and take testimony." This provision became Rule XI of the Senate's impeachment rules in 1935.[70]

The Constitution provides that the Chief Justice presides over an impeachment trial of the President, which would still take place before the full Senate.[71] Whether before a committee or the full Senate, House Members designated as impeachment "managers" have the role of prosecutor, while the Senate has the role of the judge and jury. The last impeachment occurred in 2009, when the House impeached U.S. District Judge G. Thomas Porteous, Jr. After a trial before the Senate Impeachment Trial Committee,[72] the Senate convicted Porteous on all four impeachment articles and voted to disqualify him from holding any federal office.[73]

After his 1989 impeachment and conviction, Judge William Nixon challenged the Senate's use of an impeachment trial committee.[74] He argued that when the Constitution gives "the Senate" the sole power to try impeachments, it means the full Senate. The Supreme Court, affirming the lower courts, held that this is a "political question" that "may not be resolved by the courts."[75]

The Court rejected Nixon's assertion that the word "sole" has "no substantive meaning," noting that the Constitution's Framers "labored over the question of where the impeachment power would lie."[76] Judicial involvement in impeachment proceedings would "eviscerate the 'important constitutional check' placed on the Judiciary by the Framers."[77]

The constitutional division between House impeachment and Senate trial evokes comparison between indictment and trial in the criminal justice system. While there are some conceptual or descriptive parallels, the differences are significant. As noted above, while one purpose of the criminal justice system is punishment, impeachment is a "civil remedial process."[78] Similarly, in contrast to the criminal justice system or even English impeachment practice, impeachment conviction in America can result in no more than removal from office and disqualification from other federal service.[79]

Just as the House is not limited to a specific compilation of impeachable conduct, the Senate is not bound to apply particular procedural rules or due-process standards when conducting an impeachment trial: "In the

final analysis the question is one which historically has been answered by individual Senators guided by their own consciences."[80]

Those who see a close parallel between impeachment and the criminal justice system or who favor acquittal of an impeached official will likely advocate an evidentiary standard close to "beyond a reasonable doubt."[81] During his 1986 Senate impeachment trial, Judge Harry Claiborne filed a motion to designate this as the applicable standard. On October 7, 1986, Senator Orrin Hatch (R–UT) requested a roll call vote. The Senate rejected the motion—and that standard—overwhelmingly.[82]

Conclusion

America's Founders provided for removing public officials not only when they have committed crimes, but when their misconduct threatens constitutional government, betrays the public trust, or otherwise renders them unfit to continue in office. While the 1787 Constitutional Convention focused on impeachment as a check on the President, most impeachments by the House, and all convictions by the Senate, have been of federal judges.

While the category of "high Crimes and Misdemeanors" is not limited to criminal conduct, it does not include policy differences or the kind of political opposition that can be settled through the next election. It is a process for removing federal officials, including the President, who are guilty of the kind of misconduct that renders them unfit to continue in the office to which they had been elected or appointed.

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Endnotes

1. U.S. Const. Art. II, § 4.
2. Robert S. Mueller III, Introduction to Volume II, Report on the Investigation into Russian Interference in the 2016 Presidential Election, March 2019, at 8, https://www.justice.gov/storage/report.pdf.
3. Jonathan Turley, *Impeachment? Not So Fast Without Missing Element of Criminal Intent*, The Hill, April 20, 2019, https://thehill.com/opinion/white-house/439830-impeachment-not-so-fast-without-missing-element-of-criminal-intent.
4. In its *Guide to Impeachment*, the group By the People specifically cites the Mueller investigation in describing why President Trump should be impeached. By the People, *What Will it Take? A Guide to Impeachment*, https://static1.squarespace.com/static/5b2c621e2487fde977de8a83/t/5cda573c8165f5f9b175e377/1557813054390/What+will+it+take_+Impeachment+Guide.pdf.
5. See Congressional Record, Feb. 2, 2017, p. H884 (Rep. Mark Pocan, D–WI) ("we will have to take other actions, including…even exploring the power of impeachment."); March 29, 2017, p. H2552 (Rep. Maxine Waters, D–CA) ("I say impeach Donald Trump.").
6. Reps. Brad Sherman (D–CA) and Al Green (D–TX) introduced House Resolution 438 on July 12, 2017. Its single article of impeachment alleged that President Trump violated his "constitutional duty to take care that the laws be faithfully executed" by obstructing the investigations into the activities of General Michael Flynn and Russian interference in the 2016 presidential campaign.
7. *Trump Investigations Survey*, CNN, June 2, 2019, http://cdn.cnn.com/cnn/2019/images/06/01/rel7a.-.trump,.investigations.pdf.
8. *See* Jonathan Turley, *What's Worse than Leaving Trump in Office? Impeaching Him*, Chicago Tribune, August 25, 2017, https://www.chicagotribune.com/opinion/commentary/ct-perspec-impeach-trump-disaster-0828-story.html. This feature ran until April 2018, but started up again in January 2019; https://slate.com/tag/impeach-o-meter.
9. Stephen W. Stathis *et al*., *Congressional Resolutions on Presidential impeachment: A Historical Overview*, Congressional Research Service, CRS Report for Congress No. 98–763GOV (Sept. 16, 1998), https://digital.library.unt.edu/ark:/67531/metadc819397/m2/1/high_res_d/98-763_1998Sep16.pdf. Since that report was published, resolutions of impeachment or authorizing an impeachment investigation have also been filed against Presidents George W. Bush and Donald Trump.
10. House Comm. on the Judiciary, 93d Cong., Constitutional Grounds for Presidential Impeachment 5 (Comm. Print 1974) (hereinafter "Constitutional Grounds").
11. Elizabeth B. Bazan, *Impeachment: An Overview of Constitutional Provisions, Procedure, and Practice*, Congressional Research Service, CRS Report for Congress, No. 7–5700 (Dec. 9, 2010), p. 1, https://fas.org/sgp/crs/misc/98-186.pdf.
12. Congressional Research Service, Constitution of the United States: Interpretation and Analysis, Senate Document 112-9, 112th Cong., 2nd Sess. (2017), p. 644–645. *See also* Bazan, *supra* note 11 at 1.
13. Constitutional Grounds, *supra* note 10 at 5.
14. *Id*., p. 6.
15. Constitutional Grounds, *supra* note 10 at 22. *See also* Charles Doyle, *Impeachment Grounds: A Collection of Selected Materials*, CRS Report for Congress, No. 98–882A, Oct. 29, 1998, at 1–5, https://fas.org/sgp/crs/misc/98-882.pdf.
16. Constitutional Grounds, *supra* note 10 at 22.
17. *Id*. at 23.
18. *Id*.
19. Doyle, *supra* note 15, at 6–7.
20. House Practice: A Guide to the Rules, Precedents, and Procedures of the House 603 (Charles W. Johnson *et al*. eds., 2017).
21. United States Senate, *Impeachment*, https://www.cop.senate.gov/artandhistory/history/common/briefing/Senate_Impeachment_Role.htm.
22. Constitutional Grounds, *supra* note 10 at 24.
23. Jared P. Cole *et al*., *Impeachment and Removal*, Congressional Research Service, CRS Report for Members and Committees of Congress, No. R44260 (Oct. 29, 2015), p. 1 ("The congressional power of impeachment constitutes an important aspect of the various checks and balances that were built in the Constitution to preserve the separation of powers.").
24. Cong. Research Serv., Library of Cong., 112th Cong., The Constitution of the United States of America: Analysis and Interpretation, Doc. No. 112–9, at 650 (2013) ("all the debate was in terms of the President"), https://www.congress.gov/constitution-annotated/.
25. *Impeachment of the Executive, [20 July] 1787*, Founders Online, National Archives (citations omitted); https://founders.archives.gov/documents/Madison/01-10-02-0066. *See also* Gene Healy, *Indispensable Remedy: The Broad Scope of the Constitution's Impeachment Power*, Cato Institute (2018), https://www.cato.org/publications/white-paper/indispensable-remedy-broad-scope-constitutions-impeachment-power; U.S. Constitution Annotated, *supra* note 24 at 650.

26. House Practice, *supra* note 20 at 604.
27. U.S. Constitution Annotated, *supra* note 24 at 646.
28. House Practice, *supra* note 20 at 605.
29. Congressional Record, April 15, 1970, p. 11913. *See also* Kenneth C. Davis, *The History of American Impeachment*, Smithsonian.com, June 12, 2017, https://www.smithsonianmag.com/history/what-you-need-know-about-impeachment-180963645/.
30. C.M. Ellis, *The Causes for Which a President Can Be Impeached*, The Atlantic, Jan. 1867, https://www.theatlantic.com/magazine/archive/1867/01/the-causes-for-which-a-president-can-be-impeached/548144/.
31. U.S. Department of Justice, Office of Legal Counsel, Legal Aspects of Impeachment: An Overview, February 1974, p. 7, https://www.governmentattic.org/24docs/DOJolcLegAspImpeach_1974.pdf.
32. Constitutional Grounds, *supra* note 10 at 12; *id*. at 4 ("a unique phrase used for centuries in English parliamentary impeachments, for the meaning of which one must look to history").
33. Legal Aspects of Impeachment, *supra* note 32 at 7.
34. Bazan, *supra* note 11 at 2.
35. Constitutional Grounds, *supra* note 10 at 8. *See also* Cole *et al*., *supra* note 23 at 7 ("The notion that *only* criminal conduct can constitute sufficient grounds for impeachment does not, however, comport with historical practice.").
36. Keith E. Whittington, *Balancing Independence and Accountability in Impeachable Offenses*, Matters of Debate, National Constitution Center, https://constitutioncenter.org/interactive-constitution/interpretations/balancing-independence-and-accountability-in-impeachable-offenses-by-keith.
37. U.S. Constitution Annotated, *supra* note 24 at 649.
38. Constitutional Grounds, *supra* note 10 at 10; U.S. Constitution Annotated, *supra* note 24 at 649; Doyle, *supra* note 15 at 8.
39. Constitutional Grounds, *supra* note 10 at 11; U.S. Constitution Annotated, *supra* note 24 at 649; Doyle, *supra* note 15 at 9–10; Legal Aspects of Impeachment, *supra* note 31, Appendix II at 21.
40. *See* Susan Navarro Smelcer *et al*., *The Role of the House of Representatives in Judicial Impeachment Proceedings: Procedure, Practice, and Data*, CRS Report for Congress No. R41110 (March 15, 2010), p. 8; Constitutional Grounds, *supra* note 10 at 24 ("Some of the most grievous offenses against our constitutional form of government may not entail violations of the criminal law.").
41. Constitutional Grounds, *supra* note 10 at 11; U.S. Constitution Annotated, *supra* note 24 at 649.
42. Constitutional Grounds, *supra* note 10 at 11–12; U.S. Constitution Annotated, *supra* note 24 at 649; Legal Aspects of Impeachment, *supra* note 31, Appendix II at 15 (a "criminal plus" definition of impeachable offenses would include "a gross abuse of office concept, which the Framers did not think was tantamount to 'maladministration.'").
43. John O. McGinnis, *Impeachment: The Structural Understanding*, 67 George Wash. Law Rev. 650, 653 (1999).
44. The Federalist No. 65 (Alexander Hamilton). While conduct need not be criminal to be impeachable, impeachment has no effect on whether or when an official may be prosecuted for conduct that is also criminal. *See* The Federalist No. 69 (Alexander Hamilton) (the President "would afterwards be liable to prosecution and punishment in the ordinary course of law").
45. *See also* House Practice, *supra* note 20 at 608–612; Cole *et al*., *supra* note 23 at 11–15.
46. Constitutional Grounds, *supra* note 10 at 18–19.
47. *Id*. at 19–20.
48. *Id*. at 20–21.
49. Bazan, *supra* note 11 at 27–28.
50. Akhil Reed Amar, *On Impeaching Presidents*, 28 Hofstra L. Rev. 291, 305 (1999).
51. *Id*. at 306.
52. Larry Schweikart *et al*., *A Patriot's History of the United States*, Sentinel (2004), p. 378–379.
53. *Id*.
54. Need to Impeach, *Trump's 10 Impeachable Offenses*, https://www.needtoimpeach.com/impeachable-offenses/.
55. Yoni Applebaum, *Impeach Donald Trump*, The Atlantic, March 2019, https://www.theatlantic.com/magazine/archive/2019/03/impeachment-trump/580468/.
56. U.S. Const., Art. I, § 2, Cl. 5.
57. T.J. Halstead, *An Overview of the Impeachment Process*, CRS Report for Congress No. 98–806A, April 20, 2005 at 2; Bazan, *supra* note 11 at 3–4; Smelcer *et al*., *supra* note 40 at 3–8.

58. House Practice, *supra* note 20 at 603. For instances in which an impeachment process began but did not result in impeachment, *see* Bazan, *supra* note 11 at 20–22.
59. The House also impeached Senator William Blount of Tennessee in 1797 and Secretary of War William W. Belknap in 1876. The House impeached Senator William Blount of Tennessee on July 7, 1797. The Senate did not hold a trial but, the day after Blount's impeachment, voted 25–1 to expel him for "being guilty of a high misdemeanor, entirely inconsistent with his public trust and duty as a Senator." Journal of the Senate, July 8, 1797, p. 392.
60. House Practice, *supra* note 20 at 612.
61. *Id*.; U.S. Constitution Annotated, *supra* note 24 at 650 ("Debate prior to adoption of the phrase and comments thereafter in the ratifying conventions were to the effect that the President (all the debate was in terms of the President) should be removable by impeachment for commissions or omissions in office which were not criminally cognizable.").
62. Eleven days after Nixon's resignation, the House voted 412–3 to "accept" the report of the Judiciary Committee. Stathis *et al*., *supra* note 9 at 1.
63. Bazan, *supra* note 10 at 17.
64. U.S. Const., Art. I, § 3, Cl. 6.
65. Jared P. Cole *et al*., *Impeachment and Removal*, Congressional Research Service, CRS Report for Members and Committees of Congress, No. R44260 (Oct. 29, 2015), at 1, https://crsreports.congress.gov/product/pdf/R/R44260.
66. For a list of these House impeachments and more details about the articles brought and the eventual outcome in each case, see United States House of Representatives, *List of Individuals Impeached by the House of Representatives*, https://history.house.gov/Institution/Impeachment/Impeachment-List/.
67. Susan Navarro, *The Role of the Senate in Judicial Impeachment Proceedings: Procedure, Practice, and Data*," CRS Report for Congress No. R41172, April 9, 2010, at 5. Those rules may be found here: Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials, Senate Manual, 113th Cong., 1st Sess., Senate Document 113–1, https://www.govinfo.gov/content/pkg/SMAN-113/pdf/SMAN-113.pdf.
68. Michael J. Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analysis*, 34 (University of Chicago Press, 1996); *see also* United States Senate, *Impeachment*, https://www.senate.gov/artandhistory/history/common/briefing/Senate_Impeachment_Role.htm.
69. United States Senate, *Impeachment*.
70. Smelcer, *supra* note 40 at 5.
71. U.S. Const., Art. I, § 3, Cl. 6. Senate conviction requires "the Concurrence of two thirds of the Members present."
72. See United States Senate, *Report of the Impeachment Trial Committee on the Articles Against Judge G. Thomas Porteus, Jr.*, No. 111-347, Nov. 16, 2010, https://www.congress.gov/111/crpt/srpt347/CRPT-111srpt347.pdf.
73. Hans von Spakovsky, *Porteous Impeached: The Vote Breakdown*, National Review Online, Dec. 8, 2010, https://www.nationalreview.com/corner/porteous-impeached-vote-breakdown-hans-von-spakovsky/.
74. House Practice, *supra* note 20 at 619.
75. Nixon v. United States, 506 U.S. 224, 226 (1993).
76. *Id*. at 233.
77. *Id*. at 235.
78. Smelcer *et al*., *supra* note 40 at 2.
79. U.S. Const., Art. I, § 3, Cl. 7. A Senate impeachment conviction does not immunize an official from criminal prosecution. The official remains "liable and subject to Indictment, Trial, Judgment and Punishment, according to Law."
80. Thomas B. Ripy, *Standard of Proof in Senate Impeachment Proceedings*, CRS Report for Congress No. 98-990A, January 7, 1999, at 1.
81. *Id*.
82. *Id*.