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IMPEACHMENT
A Constitutional Primer

by Jason J. Vicente

Executive Summary

As the scandal surrounding the Clinton administration grows, the possibility of impeachment looms ever larger. It is an appropriate time, therefore, to examine the function and history of the impeachment provisions of the American Constitution.

The Constitution divides the impeachment power between the two houses of Congress. The House of Representatives has the "sole Power of Impeachment" while the Senate has the "sole Power to try all impeachments." That division of responsibility guards against potential abuse of the impeachment power. Only the House can initiate the impeachment process. But the Senate determines if the charges are appropriate and if the evidence warrants conviction.

Over the course of American history, the House of Representatives has impeached 15 individuals, including a president, 12 judges, a senator, and a Cabinet member. The Senate has convicted 7 of the 15.

Although there is a debate among academic scholars concerning the range of possible impeachable offenses, most agree that indictable offenses fall within the class of impeachable offenses. There is a fundamental inconsistency, they argue, between a president's oath to faithfully execute the law and his having himself committed offenses indictable under that law.

But beyond that, the office of the presidency is an office of trust and honor. The winner of a presidential election has only a qualified right to enter and hold the office of the presidency. He cannot assume the office without taking the constitutional oath. If a president should thereafter abrogate his oath, Congress has a responsibility to vindicate the Constitution and the rule of law it secures.

Jason J. Vicente is a recent graduate of the Boston University School of Law and is presently a law clerk at the Massachusetts Superior Court in Boston.

Introduction

As the scandal surrounding the Clinton administration grows, the possibility of impeachment looms ever larger. Although news reports have focused primarily on the salacious details of the president's sexual liaison with White House intern Monica Lewinsky, constitutional scholars believe allegations of a "coverup" constitute the more serious and impeachable offenses.[1] Those allegations include President Clinton's lying under oath about his relationship with Ms. Lewinsky;[2] his asking Lewinsky to lie about the affair; and his asking others to advise Lewinsky to lie.[3]

As we digest the details of the widening scandal, many questions arise about the impeachment process. Shortly after the Lewinsky story broke, for example, an article in the Boston Globe posed a series of constitutional questions:

> Does . . . Congress [have] to accuse the President of an actual crime to justify impeachment? Does any criminal infraction, no matter how minor or technical, justify impeachment? . . . [D]oes having a sexual affair with a junior staff member clear the Constitutional threshold for prosecuting Presidents? Or lying about it? Or encouraging the staff member to lie about it under oath?[4]

This short "primer" will attempt to answer those and other such questions by examining the original constitutional debates, the textual provisions of the Constitution, past impeachments, and modern academic scholarship. It makes no judgment about the Clinton scandal itself or about the appropriateness of impeachment as a congressional response to the scandal. Rather, the aim is simply to provide useful information about the function and history of the impeachment process under the American Constitution.

Impeachment: Its Constitutional Origins

The Constitutional Convention

The Framers of the Constitution considered the impeachment mechanism so crucial that it emerged from the very beginning of the constitutional convention.[5] Edmund Randolph included it in his Virginia Plan, which provided the basis for the initial debates at the convention.[6] The

Framers wanted an executive who could be held accountable for wrongful conduct, but they did not want to create a new monarchy in the executive office. Elbridge Gerry expressed the sentiment of the founding generation when he stated, "the maxim would never be adopted here that the chief Magistrate could do [no] wrong."[7]

To hold the president accountable, the Framers vested the executive power in one individual. The idea of a "plural executive" was seriously considered but ultimately rejected, despite its antimonarchical structure. Some felt that a plural executive would hinder the ability of the electorate to hold it responsible. Alexander Hamilton stated, for example, that

> the plurality of the executive tends to deprive the people of the two greatest securities they can have for the faithful exercise of any delegated power, first, the restraints of public opinion, which lose their efficacy, as well on account of the division of the censure attendant on bad measures among a number, as on account of the uncertainty on whom it ought to fall; and, second, the opportunity of discovering with facility and clearness the misconduct of the persons they trust, in order either to their removal from office or to their actual punishment in cases which admit of it.[8]

Another convention delegate, William R. Davie, noted that where there is but one executive, everyone will know where to place the blame. At the convention, Davie stated that impeachment "was an essential security for the good behaviour of the Executive."[9]

Benjamin Franklin argued that the impeachment power was in the president's best interest.

> History furnishes one example only of a first Magistrate being formally brought to public Justice. . . . What was the practice before this in cases where the chief Magistrate rendered himself obnoxious? Why recourse was had to assassination in [which] he was not only deprived of his life but of the opportunity of vindicating his character. It [would] be the best way therefore to provide in the Constitution for the regular punishment of the Executive when his misconduct should deserve it, and for his honorable acquittal when he should be unjustly accused.[10]

James Madison considered the impeachment power "indispensable . . . for defending the Community [against] the incapacity, negligence or perfidy of the chief Magistrate."[11] Madison felt that limiting a president's time in office simply did not provide sufficient security against the potential abuse of power. During his tenure in office, the president may "lose his capacity [and] . . . pervert his administration into a scheme of peculation or oppression . . . [or] betray his trust to foreign powers."[12] Thus, Madison concluded that impeachment was a necessary check because the president's "loss of capacity or corruption . . . [could] be fatal to the Republic."[13]

Although strong sentiment existed for a presidential impeachment mechanism, there was some opposition. Gouverneur Morris and Charles Pinckney both sought to remove the provision for impeachment of the president.[14] Morris gave two reasons for striking the provision. First, he believed that the president could not commit any impeachable act without "coadjutors" (assistants).[15] Consequently, the Constitution could safeguard the country from the president's wrongful acts by creating punishments to deter potential coadjutors.

Second, Morris expressed concerns that the branch empowered to impeach the president would end up controlling him. George Mason responded to Morris's concerns by stating:

> No point is of more importance than that the right of impeachment should be continued. Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice? When great crimes [are] committed . . . punish[] the principal as well as the Coadjutors.[16]

Mason elaborated his point by referring to concerns about the corruptibility of electors. "Shall the man who has practised corruption [and] by that means procured his appointment in the first instance, be suffered to escape punishment, by repeating his guilt?"[17] Morris, persuaded by that argument, abandoned his view and admitted the president should be impeachable.

Pinckney, however, remained unconvinced. He felt that impeachment provided the legislature with a "rod over the Executive" that "[will] destroy his independence."[18] "If he opposes a favorite law, the two Houses will combine [against] him, and under the influence of heat and faction throw him out of office."[19] Pinckney also believed that

the powers given to the president "would be so circumscribed as to render impeachment unnecessary."[20]

Once the delegates decided to include a procedure for impeaching the president,[21] the debate shifted to the issue of where to vest the impeachment power. Randolph's Virginia Plan vested the power to impeach national officers in the national judiciary.[22] Later in the convention, William Paterson proposed the New Jersey Plan, which provided for removal of national officers through a majority of state governors.[23] Alexander Hamilton proposed that "all impeachments be tried by a Court to consist of the Chief or Judge of the Superior Court of Law of each State."[24] As a compromise, the Committee of Detail[25] initially recommended that "impeachments shall be . . . before the Senate and the judges of the [federal] judicial Court."[26] On September 4, 1787, the committee recommended that the president "be removed from his office on impeachment by the House of Representatives, and conviction by the Senate."[27]

Among other changes the committee suggested was the electoral college system for electing the president. Morris believed that removing the presidential election process from the Senate was "a conclusive reason for making the Senate instead of the Supreme Court the Judge of impeachments."[28] "No other tribunal than the Senate could be trusted. The Supreme Court were too few in number and might be warped or corrupted."[29] Roger Sherman agreed that the Supreme Court did not provide a proper impeachment forum because the president appointed the judges.[30]

Hamilton noted that since impeachment seeks to punish a betrayal of public trust, it is proper to place the power to inquire into such matters with those that represent the public. But he maintained that the Senate was the proper forum to try impeachments:

> The punishment which may be the consequence of conviction upon impeachment, is not to terminate the chastisement of the offender. After having been sentenced to a perpetual ostracism from the esteem and confidence, and honors and emoluments of his country, he will still be liable to prosecution and punishment in the ordinary course of law. Would it be proper that the persons who had disposed of his fame, and his most valuable rights as a citizen, in one trial, should, in another trial, for the same offence, be also the disposers of his life and his fortune? Would there not be the greatest reason to apprehend,

> that error, in the first sentence, would be the parent of error in the second sentence? That the strong bias of one decision would be apt to overrule the influence of any new lights which might be brought to vary the complexion of another decision? Those who know anything of human nature, will not hesitate to answer these questions in the affirmative; and will be at no loss to perceive, that by making the same persons judges in both cases, those who might happen to be the objects of prosecution would, in great measure, be deprived of the double security intended them by a double trial.[31]

The convention debate then shifted to the question of what kind of conduct ought to constitute grounds for impeachment. George Mason ignited the debate about what impeachable offenses ought to be enumerated in the Constitution.[32] At the time of his motion, the only impeachable offenses included in the proposed charter were treason and bribery. Mason believed that "attempts to subvert the Constitution may not be Treason" as they had defined that offense.[33] To correct that error, Mason proposed that "maladministration" be added to the list of offenses. Madison objected, considering that offense "so vague a term [that it] will be equivalent to a tenure during pleasure of the Senate."[34] Mason then withdrew maladministration and replaced it with the phrase "other high Crimes and misdemeanors." The delegates passed that recommendation 8 to 3 without further debate.[35]

Unfortunately, the paucity of debate on this subject among the Framers leaves us with little guidance as to what might be considered grounds for impeachment. Looking elsewhere, we find two possible sources of guidance: England and the colonial experience. In February 1974, the House of Representatives' Committee on the Judiciary published a report by the Staff of the Impeachment Inquiry entitled Constitutional Grounds for Presidential Impeachment.[36] To better understand the Framers' intent, the Inquiry examined the history of impeachment in England, noting Hamilton's statement that "Great Britain had served as the model from which [impeachment] has been borrowed,"[37] and Mason's reference, when he proposed the "other high Crimes and misdemeanors" clause, to the impeachment of Warren Hastings in India.[38]

At the time of the American constitutional convention, England had impeached persons under "high Crimes and Misdemeanors" for over 400 years. In analyzing the

English impeachments, the Inquiry concluded that the phrase referred to acts that damaged the state.[39]

• In 1386, the first appearance of the phrase, Parliament impeached Michael de la Pole for "breaking a promise he made to the full Parliament to execute in connection with a parliamentary ordinance the advice of a committee of nine lords regarding the improvement of the estate of the King and the realm," and for failing to pay a ransom with funds Parliament allocated for such use.[40]

• In 1450, William de la Pole was impeached for "high Crimes and misdemeanors" for "advising the King to grant liberties and privileges to certain persons to the hindrance of the due execution of laws, procuring offices for persons who were unfit and unworthy of them, and squandering away the public treasure."[41]

• In 1621, the King's Attorney General, Sir Henry Yelverton, suffered impeachment for failing to prosecute suits he had already commenced and for prematurely exercising authority.[42]

• In 1640, Thomas Wentworth faced impeachment for "traitorously endeavor[ing] to subvert the Fundamental Laws and Government of the Realms . . . and instead thereof, to introduce Arbitrary and Tyrannical Government against Law."[43]

• In 1668, Peter Pett, Commissioner of the Navy, was impeached for negligent preparation for a Dutch invasion and for negligently losing a ship.[44]

• Chief Justice Scrogg faced impeachment in 1680 for "brow beating witnesses and commenting on their credibility, and with cursing and drinking to excess, thereby bringing 'the highest scandal on the public justice of the kingdom.'"[45]

• In 1701, Edward, Earl of Oxford, was impeached for taking advantage of his position as a member of the King's privy council to obtain money for his own use and for procuring a naval commission for a person of "ill fame and reputation."[46]

• Warren Hastings, the individual George Mason mentioned during the debates, faced charges of "gross maladministration, corruption in office, and cruelty toward the people of India." The impeachment pro-

ceedings began in 1788, but did not end until 1795. Hastings was ultimately acquitted.[47]

From that record, the Inquiry concluded that "other high Crimes and Misdemeanors" was a phrase peculiar to impeachments, separate from criminal law,[48] and that impeachable offenses focused on conduct damaging to the state, including, but not limited to, "misapplication of funds, abuse of official power, neglect of duty, encroachment on Parliament's prerogatives, corruption and betrayal of trust."[49]

It should be noted that some academic scholars have criticized the heavy weight the 1974 Inquiry attached to English impeachment practices. Michael Gerhardt, professor of law at the College of William and Mary, for example, condemns such reliance because he believes that the delegates referenced colonial practice more than England's,[50] putting "a uniquely American stamp on the Constitution's impeachment clauses."[51] To support that contention, Gerhardt calls attention to eight American innovations in impeachment practices.[52] First, the delegates sought to define impeachable offenses whereas Parliament refused to "restrictively define" them.[53] Second, the Constitution limits impeachment to "civil Officers,"[54] while the English could impeach anyone except members of the royal family.[55] Third, the Senate needs a two-thirds vote for conviction,[56] while the House of Lords needs only a "bare majority."[57] Fourth, the delegates limited punishment for impeachment--as distinct from punishment following any subsequent indictment and conviction--to removal from office and disqualification from holding future offices.[58] The House of Lords could order any punishment it deemed appropriate.[59] Fifth, the King could pardon anyone after an impeachment conviction while the Constitution expressly forbids the chief executive such power.[60] Sixth, the King could not be impeached, but the president can be.[61] Seventh, impeachment proceedings in England were criminal, while the Constitution separates impeachment and criminal proceedings.[62] Finally, the English had alternative methods of removing judges while the Constitution provides impeachment as the sole means of removal.[63]

The Constitutional Text

When the constitutional convention finally adjourned, the proposed charter used the term "impeachment" six times. Here are the pertinent provisions:

> • The House of Representatives . . . shall have the sole Power of Impeachment.[64]
>
> • The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.[65]
>
> • 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: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.[66]
>
> • The President . . . shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.[67]
>
> • 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.[68]
>
> • The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury.[69]

It should also be noted that article III, § 1, states that "[t]he Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour." No one disputes the proposition that impeachment is the procedure to remove judges from office whenever they should fall below the standard of "good Behaviour."[70]

The Ratification Debates

Although the "Federal Farmer," written by Anti-Federalist Richard Henry Lee, agreed that the bifurcated legislature provided the appropriate impeachment forum,[71] most Anti-Federalists condemned the impeachment mechanism set forth in the proposed constitution.[72] Thus, "Cincinnatus" complained that the impeachment power conferred a judicial function on the Senate.[73] That, together with its legislative power and the executive power of approving official appointments, would likely "produce a baneful aristocracy, which will swallow up the democratic

rights and liberties of the nation."[74] Cincinnatus maintained that the House of Representatives, "the true representative of the democratic part of the system; the shield and defense of the people," was the proper forum to protect against crimes threatening the nation.

> [The House of Representatives'] transcendent and incommunicable power of impeachment--that high source of its dignity and control--in which alone the majesty of the people feels his scepter, and bears aloft his fasces--is rendered ineffectual, by its being triable before its rival branch, the senate, the patron and prompter of measures against which it is to sit in judgment. It is therefore most manifest, that from the very nature of the Constitution the right of impeachment apparently given, is really rendered ineffectual.[75]

Hamilton responded to that criticism by pointing out that no other forum but the Senate could sit as a buffer between the president, "the accused," and the House of Representatives, "his accusers."[76] Hamilton went on to explain the importance of separating the accuser from the trier:

> The powers relating to impeachments are . . . an essential check in the hands of that body upon encroachments of the executive. The division of them between the two branches of the legislature, assigning to one the right of accusing, to the other the right of judging, avoids the inconvenience of making the same persons both accusers and judges; and guards against the danger of persecution, from the prevalence of a factious spirit in either of those branches. As the concurrence of two thirds of the Senate will be requisite to a condemnation, the security of innocence, from this additional circumstance, will be as complete as itself can desire.[77]

Another Anti-Federalist concern regarding the impeachment provisions centered on Congress' doubtful use of the power to discipline its own members or appointed officers.[78] Joseph Taylor, Timothy Bloodworth, and William Potter inferred possible reluctance from the likelihood that both members and appointed officers would be friends of the impeacher and trier: members because they are peers; appointed officers because Congress probably granted those appointments to friends and family.[79] By placing the sole power of impeachment in the House and the sole power

to try impeachments in the Senate, members and agents would likely evade justice.

Hamilton responded to those criticisms in two ways. First, the Senate had an interest "in the respectable and prosperous administration of [the nation's] affairs."[80] Any official activity contrary to that interest would be sufficient to prompt congressional action.[81] In addition, the Senate does not choose appointees; it only provides its "advice and consent." Thus, the contention that the Senate would shield appointed officers from impeachment because they were friends was unfounded, Hamilton concluded.[82]

Another problem with the Anti-Federalist objection was its assumption that senators and representatives are impeachable officers. This is a matter of some dispute. While it is true that the first impeachment under the Constitution involved a United States senator,[83] some maintain that the Senate dismissed that impeachment precisely because senators and representatives are not impeachable.[84]

Modern constitutional scholars are divided on the impeachability of senators and representatives.[85] Two prominent scholars, Raoul Berger and Ronald Rotunda, argue that the reference to "all Civil Officers of the United States" in article II, § 4, includes legislators.[86] Professor Gerhardt, however, makes a strong case as to why legislators are not "civil Officers" as that term is used in the Constitution.[87] Gerhardt focuses on three clauses in the Constitution to support his position. First, article II, § 3, states that the President will commission all officers.[88] The president does not commission either representatives or senators.[89] Second, Gerhardt looks at the incompatibility clause, which states:

> No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.[90]

According to Gerhardt, that "clause suggests that legislators and officers of the United States are mutually exclusive for Constitutional purposes."[91] Finally, Gerhardt cites the expulsion clause, which provides that "each House may determine the Rules of its Proceedings, punish

its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member."[92] Providing two methods for removing a legislator seems redundant and illogical.[93] Taken together, therefore, those three clauses strongly suggest that legislators are not civil officers subject to impeachment.[94]

Impeachment: The Historical Precedents

Over the course of American history, the House of Representatives has impeached 15 individuals, including a president, 12 judges, a senator, and a cabinet member.[95] The Senate has convicted 7 of the 15.[96]

The Nonpresidential Impeachment Cases

Senator William Blount has the ignominious distinction of being the first person to face impeachment charges.[97] Blount's difficulties began when he made speculative land investments in the western United States.[98] He hoped to "realize significant income" from selling land to the pioneers moving west. Aware that foreign control of western territories threatened his investment, Blount organized an army to take Louisiana from the Spanish. To achieve his goal, Blount sought financial and material assistance from the English in exchange for allowing the English control of Louisiana and access to the Mississippi River. Blount's plans unraveled when a letter he sent to a compatriot fell into the hands of the Senate.[99] The Senate used its expulsion power[100] to expel Blount within a week of the letter's revelation.[101]

Despite the expulsion, the House of Representatives approved five articles of impeachment eight months later.[102] Article I alleged that Blount had "conspired and contrived to promote a hostile military expedition against the Spanish possessions of Louisiana and Florida" to take them away from Spain and give them to England, "contrary to the duty of his trust and station as a Senator of the United States, in violation of the obligations of neutrality, and against the laws of the United States, and the peace and interests thereof."[103] Article II alleged that Blount committed those acts knowing that a treaty existed between the United States and Spain. Article III alleged that Blount's attempts to obtain the aid of the Cherokee and Creek tribes undermined the President's efforts to develop relationships with Indian tribes. Article IV charged that Blount attempted to use a presidentially appointed assistant post trader as an interpreter to persuade the Creek

and Cherokee to join his efforts to expel the Spanish. Article V charged that Blount committed those acts in contravention of an existing treaty between the United States and the Cherokee nation.

At his 1797 trial, Blount made three arguments in his defense: (1) he was not a "civil Officer," as that term is used in the Constitution, and therefore not subject to impeachment; (2) the Senate could not convict him because it had already expelled him; and (3) the House failed to allege any crime or misdemeanor that he committed in the execution of his office.[104] The Senate voted that it "ought not to hold jurisdiction" and the case was dismissed.[105]

In 1803, the House passed four articles of impeachment against Federal District Judge John Pickering. The first three articles focused on his judicial rulings against the federal government in an admiralty action the government had brought against a ship and its merchandise for alleged failure to pay appropriate duties.[106] Those rulings included the refusal to hear testimony and grant an appeal.[107] The fourth article of impeachment may provide some insight into the broad meaning the House apparently attached to the phrase "other high Crimes and Misdemeanors." Article IV charged:

> That whereas for the due, faithful, and impartial administration of justice, temperance and sobriety are essential qualities in the character of a judge, yet the said John Pickering, being a man of loose morals and intemperate habits, . . . did appear upon the bench of the said court, for the purpose of administering justice, in a state of total intoxication, . . . and did then and there frequently, in a most profane and indecent manner, invoke the name of the Supreme Being, to the evil example of all good citizens of the United States, and was then and there guilty of other high misdemeanors, disgraceful to his own character as a judge, and degrading to the honor and dignity of the United States.[108]

The Senate convicted Pickering on all four articles.[109]

Justice Samuel Chase faced impeachment in 1804.[110] The charges arose from some controversial judicial rulings he had made while serving in the capacity of a district judge. Article I charged that Chase delivered a written opinion regarding treason without hearing the attorneys' arguments, thereby preventing counsel from citing cases and depriving a defendant of his constitutional right to argue

the law, "to the disgrace of the character of the American bench."[111] Article II charged that, in another trial, Chase allowed an individual to serve as a juror even after the individual had admitted that his mind was already made up about the case. Article III charged that Chase prevented a witness from testifying. Article IV alleged that Chase conducted himself in an unjust, partial, and intemperate manner by, among other things, "compelling defendant's counsel to reduce to writing for the court's inspection, the questions [he] wished to ask [a] witness;" refusing to grant a postponement, although counsel filed an affidavit stating that a material witness was unavailable that day; using "unusual, rude and contemptuous expressions" toward defendant's counsel; repeatedly interrupting defendant's counsel, causing his withdrawal; and soliciting defendant's conviction. Article V alleged that, in a libel case, Chase issued a bench warrant in lieu of a summons, contrary to law. Article VI charged that, contrary to law, Chase refused a continuance "with intent to oppress and procure the conviction" of the defendant. Articles VII and VIII alleged improper influence on a grand jury. In a politically charged setting, the Senate failed to convict Chase on any of the charges.

In 1826, the House brought a single article of impeachment against District Judge James Peck.[112] The article charged that Peck had exceeded his contempt powers by imprisoning and causing the suspension of an attorney who had published an article critical of him.[113] The Senate failed to convict, 21 to 22.

In 1862, District Judge West Humphreys faced seven articles of impeachment.[114] The first four articles charged Humphreys with inciting revolt and rebellion, advocating and agreeing to Tennessee's secession from the Union, organizing armed rebellion, and conspiring to violate a statute making it a criminal offense to "oppose by force the authority of the government of the United States."[115] Article V charged Humphreys with failing to perform his judicial duties for nearly a year. Articles VI and VII focused on attempts by Humphreys to coerce Union sympathizers to defect to the Confederacy. The Senate could not serve Humphreys with the articles of impeachment because he had left Union territory. The Senate nonetheless convicted Humphreys in absentia.

In 1876, the House impeached Secretary of War William W. Belknap. The five articles were all related to an allegation that Belknap had sold a military trading post appointment. Among the charges was that Belknap "criminally disregard[ed] his duty as Secretary of War, and

basely prostitut[ed] his high office to his lust for private gain . . . to the great disgrace and detriment of the public service."[116] The Senate did not convict.

In 1903, the House voted 12 articles of impeachment against District Judge Charles Swayne. Article I charged that Swayne filed false claims for travel expenses when he served as a visiting judge.[117] Articles II and III alleged that on other occasions Swayne claimed and received excess travel expenses. Articles IV and V claimed that Swayne appropriated a railroad car for his private use without giving proper compensation. Articles VI and VII charged that he had failed to live in the jurisdiction of his judgeship for periods of six and nine years in violation of a congressional statute that labeled such failure a "high misdemeanor."[118] The remaining articles charged that Swayne "misbehaved himself in his office as judge and was and is guilty of an abuse of judicial power and a high misdemeanor in office," when he "improperly imprisoned two attorneys and a litigant for contempt of court."[119] The Senate acquitted Swayne on all of the charges.

In 1912, the House impeached Circuit Judge Robert Archbald. The first of 13 articles of impeachment alleged that Archbald used his position to induce a company's officers to enter into a contract with him and his business partner. Article II charged the improper use of his position to influence a litigant to settle a case and purchase stock. Article III made the same charge with respect to obtaining a leasing agreement.[120] Article IV charged wrongful conduct for an improper ex parte meeting the judge had with an attorney. Article V charged the judge with receiving an improper gift. Article VI alleged another improper use of position, this time to obtain an interest in land. Articles VII through XII contained allegations of improper influence of litigants for personal gain and accepting large amounts of money. Article XIII essentially summarized Archbald's wrongful conduct during his tenure as a judge. The Senate convicted Archbald on 5 of the 13 articles (including the 13th).[121]

In 1926, District Judge George English confronted five articles of impeachment. The first charged that English:

> "did on diverse and various occasions so abuse the powers of his high office that he is hereby charged with tyranny and oppression, whereby he has brought the administration of justice in [his] court . . . into disrepute . . . [and has] willfully, tyrannically, oppressively and unlawfully" disbarred lawyers practicing before him,

> summoned state and local officials in an imaginary case and denounced them with profane language and without sufficient cause summoned two newspapermen to his court and threatened them with imprisonment.[122]

Articles II and III charged Judge English with entering into an improper relationship with a bankruptcy referee he had appointed. Article IV charged that he ordered bankruptcy funds deposited into banks in which he was a stockholder, a director, or a depositor. The final article focused on his oppressive treatment of lawyers and their clients, resulting in the violation of constitutional rights. Because English resigned six days prior to his trial, the Senate voted to cancel the impeachment proceeding.[123]

In 1933, the House approved five articles of impeachment against District Judge Harold Louderback.[124] Articles I and II alleged that Louderback had received kickbacks from an attorney he had appointed as a receiver in a bankruptcy proceeding and had allowed the attorney to charge exorbitant fees for his services. Articles III and IV charged Louderback with appointing an unqualified individual as a receiver and with using his powers as a judge to enrich the receiver. A final article focused on the effect of the conduct alleged in the first four articles, stating that "the reasonable and probable result has been to create a general condition of widespread fear and distrust and disbelief in the fairness and disinterestedness" of his official actions.[125] The Senate failed to convict on all charges.

In 1936, the House voted to impeach District Judge Halsted L. Ritter. The first of seven articles of impeachment charged Ritter with ordering the payment of exorbitant legal fees to a former partner of his and receiving part of the fees himself. The second article alleged a conspiracy to keep a bankruptcy matter before his court, which allowed him to "'profit[] personally' from the 'excessive unwarranted' fees."[126] The article also charged that he "wilfully failed and neglected to perform his duty to conserve the assets of the hotel."[127] Articles III and IV charged Ritter with "the practice of law while on the bench," a violation of the Judicial Code. Articles V and VI charged Ritter with tax evasion for failing to report the income he received from the endeavors described in Articles I through IV. As in the Louderback case, the final article alleged that

> "the reasonable and probable consequences of [Judge Ritter's] actions or conduct . . . as an individual or . . . judge, is to bring his court into scandal and disrepute," to the prejudice of his court and public confidence in the administration of justice in it, and to "the prejudice of the public respect for and confidence in the Federal Judiciary."[128]

The Senate failed to convict Ritter on the first six articles, but convicted on the seventh. Interestingly, Judge Ritter appealed his conviction to the Court of Claims, arguing that the Senate convicted him on charges that did not fall within the impeachable offenses enumerated in article II, § 4 of the Constitution.[129] Citing the "sole power" provision, the court dismissed the case because it did not have jurisdiction to review Senate impeachment trials.[130]

The final three nonpresidential impeachments occurred in relatively rapid succession. In 1986, the Senate convicted Judge Harry Claiborne on charges stemming from income tax evasion.[131] In 1989, the House impeached and the Senate subsequently convicted Judge Alcee Hastings for accepting a $150,000 bribe.[132] And just a few weeks after the Hastings matter, Judge Walter Nixon suffered impeachment and conviction for committing perjury.[133]

The Presidential Impeachment Cases

Andrew Johnson. In 1867, the House voted for 11 articles of impeachment against President Andrew Johnson.[134] Nine of the 11 articles dealt with Johnson's dismissal of Secretary of War Edwin Stanton in violation of the Tenure of Office Act. The Tenure of Office Act stated basically that any officer appointed with the Senate's consent could not be removed without its consent.[135]

By way of background, Stanton vehemently opposed Johnson's post-Civil War reconstruction policies.[136] While other cabinet members whose views conflicted with Johnson's resigned from their posts, Stanton remained in office, acting as a spy for radicals in the Senate. Eventually, Johnson began to suspect Stanton's disloyalty. In particular, he came to believe that Stanton had drafted the Army Appropriations Act, which severely limited presidential authority. Those suspicions led Johnson to suspend and then dismiss Stanton. The impeachment articles relating to those events charged Johnson with dismissing and replacing Stanton, in violation of the Tenure of Office

Act, and with conspiring with others to effectuate the dismissal and replacement.

The House placed the more interesting allegations in articles X and XI. Article X charged that in violation of the "courtesies which ought to exist and be maintained between the executive and legislative branches of the government of the United States, [President Johnson], designing and intending to set aside the rightful authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt and reproach, the Congress of the United States . . . by making certain intemperate, inflammatory and scandalous harangues."[137] Those allegations arose from several speeches Johnson had made throughout the country. In a speech he made in Washington, D.C., for example, Johnson said:

> So far as the executive department of the Government is concerned, the effort has been made to restore the Union, to heal the breach, to pour oil into the wounds which were consequent upon the struggle, and . . . to prepare, as the learned and wise physician would, a plaster healing in character and coextensive with the wound . . . We have witnessed in one department of the Government every endeavor to prevent the restoration of peace, harmony and Union. We have seen hanging upon the verge of the Government, as it were, a body called, or which assumes to be, the Congress of the United States, while in fact it is a Congress of only a part of the States. . . . We have seen Congress gradually encroach step by step upon Constitutional rights, and violate, day after day and month after month, fundamental principles of the Government. We have seen a Congress that seemed to forget that there was a limit to the sphere and scope of legislation. We have seen a Congress in a minority assume to exercise power which, allowed to be consummated, would result in despotism or monarchy itself.[138]

Johnson made several other speeches charging Congress with hindering the reconstruction process and questioning its constitutional authority on related matters.

Article XI combined all the previous articles, claiming the conduct contained in them demonstrated Johnson's violation of his duties as president of the United States.[139] The Senate voted only on articles II, III, and XI, failing to convict on each by a razor-thin margin of one vote.[140]

Richard M. Nixon. The attempted impeachment of President Richard M. Nixon arose from a break-in at the headquarters of the Democratic National Committee by political operatives associated with the president's reelection campaign organization. The House Judiciary Committee drafted articles of impeachment as categories under which it enumerated numerous charges.[141]

The first article focused on the June 17, 1972, break-in, alleging that Nixon used "powers of his high office . . . to delay, impede and obstruct investigations" into the burglary. The conduct described under the article included (1) making or causing others to make false or misleading statements; (2) withholding relevant and material evidence; (3) "approving, condoning, acquiescing in, and counseling witnesses" with respect to false or misleading statements and testimony; (4) interfering with the investigations of the Department of Justice, the Federal Bureau of Investigation (FBI), the Watergate Special Prosecution Force, and congressional committees; (5) paying bribes to obtain silence or false testimony from witnesses; (6) misusing the Central Intelligence Agency (CIA); (7) disseminating information received from the Department of Justice to suspects in order to aid and assist them in evading criminal prosecution; (8) making false or misleading statements to the people of the United States to deceive them into believing a thorough and complete investigation had been conducted; and (9) promising prospective defendants that they would receive favored treatment for silence or false testimony.[142]

The second article of impeachment charged that Nixon "repeatedly engaged in conduct violating the constitutional rights of citizens, impairing the due and proper administration of justice and the conduct of lawful inquiries, or contravening the laws governing agencies of the executive branch and the purposes of these agencies."[143] Charges under that article included (1) obtaining information about certain individuals from the Internal Revenue Service (IRS) and having the IRS perform improper income tax audits and other income tax investigations; (2) using the FBI and Secret Service to perform unlawful electronic surveillance; (3) authorizing and maintaining a secret investigative unit ("the plumbers") to engage in covert and unlawful activities; (4) failing to faithfully execute the laws by failing to act when he became aware of his subordinates' unlawful conduct; and (5) misusing agencies under the control of the executive branch, including the FBI, the CIA, and the Department of Justice.[144]

The final article addressed Nixon's refusal to produce documents that the House had subpoenaed and his decision to determine what information Congress could have.[145] The House alleged that such acts "interposed the powers of the presidency against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgments necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives."[146] President Nixon resigned before those articles were put to a vote before the full House.[147]

Impeachment: The Academic Scholarship

Constitutional scholars have developed several different approaches to interpreting the impeachment provisions. As previously noted, to elucidate the meaning of the phrase "other high Crimes and Misdemeanors," the 1974 Impeachment Inquiry focused on English precedents to the exclusion of the American colonial experience. Professor Raoul Berger, another prominent advocate of this approach, has concluded that there are only seven, albeit broad, impeachable offenses: (1) misapplication of funds, (2) abuse of official power, (3) neglect of duty, (4) encroachment on or contempt of Parliament's prerogatives, (5) corruption, (6) betrayal of trust, and (7) giving pernicious advice to the Crown.[148]

A second interpretive approach is to focus exclusively on the text of the Constitution. Irving Brant, author of Impeachment: Trials and Errors, is a leading proponent of this approach.[149] Brant rejects the usefulness of English history or original intent.[150] Limiting himself to the four corners of the document, Brant concludes that the only impeachable offenses are treason, bribery, and violations of the oath of office.[151] Here too, however, the terms of the oath of office admit of a broad reading.

The third interpretive method focuses on what the Senate has done in the past. If one accepts the proposition that the judiciary may not review impeachment trials,[152] the Senate is the tribunal of final recourse. With respect to impeachments, then, the Senate can be viewed as the equivalent of the Supreme Court. And since lawyers look to Supreme Court rulings to ascertain the law in all areas where it holds jurisdiction, Professors Frank Thompson and Dan Pollitt argue that we should look to Senate precedents to determine the law in the area where it holds exclusive jurisdiction. Based on the historical record, Thompson and Pollitt maintain that the only impeachable offenses are indictable offenses.[153] They reach

that conclusion by noting that the Senate has convicted only those charged with indictable offenses.[154]

The final interpretive approach is a comprehensive one advanced by Professor Michael Gerhardt.[155] Gerhardt's reading of the historical record is that impeachable offenses extend beyond indictable offenses.[156] In his view, the only question is what range of nonindictable offenses should be included with indictable ones under the umbrella of "impeachable offenses."[157] To support his position, Gerhardt cites the following statement by Hamilton in the Federalist Papers:

> A well constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are 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.[158]

In addition to noting the political nature of impeachable offenses, Gerhardt points out that Justice Joseph Story interpreted the "high Crimes and Misdemeanors" clause broadly:

> Political offenses are of so various and complex a character, so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it.[159]

From statements such as those, Gerhardt concludes that Hamilton and Story understood that "subsequent generations would have to define on a case-by-case basis the political crimes serving as contemporary impeachable offenses."[160]

Conclusion

This study has outlined the history, purpose, and scope of the impeachment provisions of the U.S. Constitution. While there is a debate among academic scholars concerning the range of possible impeachable offenses, most scholars agree that indictable offenses fall within the class of impeachable offenses. That is because there is a fundamental inconsistency, they argue, between

a president's oath to faithfully execute the law and his having himself commited offenses indictable under that law.

But beyond that, the office of the presidency is an office of trust and honor. The winner of a presidential election has only a qualified right to enter and hold the office of the presidency. He cannot assume the office without taking the constitutional oath. If a president should thereafter abrogate his oath, Congress has a responsibility to vindicate the Constitution and the rule of law it secures.

Notes

1. See Peter S. Canellos, "Too Early to Tell A Likely Outcome: The Clinton Allegations," Boston Globe, January 23, 1998, p. A1, quoting Boston University School of Law Professor Tracey Maclin as stating that if Clinton lied at his deposition about his relationship with Monica Lewinsky, the House would likely impeach the president; Mark Mueller, "Scandal Rocks Clinton: Congress Can Impeach if Evidence Supports Allegations," Boston Herald, January 23, 1998, p. 4, quoting experts who state that perjury, suborning perjury, and obstruction of justice would easily meet constitutional impeachment standards. Professor Maclin further asserts that such behavior "bring[s] into disrepute the office of the presidency." Ibid. Yet, no expert stated or suggested that the sexual impropriety itself was an impeachable offense.

2. The lies are alleged to have occurred during a six hour deposition taken by attorneys for Paula Jones and, perhaps, during the president's deposition in the Lewinsky case. Although the press generally refers to the Jones case as a sexual harassment suit, it is not. When Paula Jones brought the suit, the statute of limitations had run for any sexual harassment claims she may have had. Instead, Paula Jones brought suit against President Clinton for violating her constitutional rights, intentionally inflicting emotional harm, and defamation. The claims arose from an article by David Brock entitled "Living with the Clintons: Bill's Arkansas Bodyguards Tell the Story the Press Missed," American Spectator, January 1994, which described advances Mr. Clinton made toward a woman named "Paula" when he was governor of Arkansas. Jones perceived the portrayal of events in the article as an attack on her and filed the complaint, nearly three years after the alleged advances occurred. See Note, "Temporary Presidential Immunity: Adhering to the Separation of Powers Doctrine and the Will of the Framers for Civil Damages

Litigation Involving the President - The Jones v. Clinton Case," St. Louis Law Journal 40 (1996): 836-837.

3. See Mueller, p. 3.

4. Peter Canellos, "To Impeach a President: A Look at 'High Crimes,'" Boston Globe, February 13, 1998, p. A1.

5. See The Records of the Federal Convention of 1787, Max Farrand ed. (New Haven: Yale University Press, 1937), vol. 1, pp. 21-22.

6. Ibid.

7. Ibid., vol. 2, p. 66 (Farrand's interpolation).

8. Alexander Hamilton, Federalist no. 70, in The Federalist Papers (New York: New American Library, 1961), pp. 428-429.

9. The Records of the Federal Convention, vol. 2, p. 64.

10. Ibid., p. 65.

11. Ibid.

12. Ibid., pp. 65-66.

13. Ibid., p. 66.

14. Ibid., vol. 2, p. 64.

15. Ibid.

16. Ibid., p. 65.

17. Ibid.

18. Ibid., p. 66.

19. Ibid., p. 551.

20. Ibid., p. 68.

21. Ibid., p. 69. On the question, "Shall the Executive be removable on impeachments?" the delegates voted 8 to 2 in favor of impeachment.

22. Ibid., vol. 1, p. 22.

23. Ibid., p. 252.

24. Ibid., pp. 292-93.

25. The Committee of Detail, composed of Edmund Randolph, Nathaniel Gorham, John Rutledge, and Oliver Ellsworth, was responsible for putting the convention's "resol[utions], suggestions, amendments and propositions into workable arrangement." Catherine Drinker Bowen, Miracle at Philadelphia: The Story of the Constitutional Convention, May to September 1787 (Boston: Little, Brown, 1986), p. 192.

26. See Records of the Federal Convention, vol. 2, p. 136.

27. Ibid., pp. 493, 495, 497, 499.

28. Ibid., p. 500.

29. Ibid., p. 551.

30. Ibid.

31. Alexander Hamilton, Federalist no. 65, in The Federalist Papers, pp. 398-399.

32. See Records of the Federal Convention, vol. 2, p. 550.

33. Ibid.

34. Ibid.

35. Ibid.

36. Interestingly, Hillary Rodham Clinton's first position after graduating from Yale Law School was as a staff attorney conducting research for the Staff of the Impeachment Inquiry. See Mark Lacey, "Investigations: Whitewater Revives Watergate Memories: Many Principals in Current Probe Have Links to Investigation that Ended Nixon Presidency in Disgrace," Los Angeles Times, May 20, 1997, p. 5.

37. House Report, p. 4 (citing The Federalist Papers, no. 65).

38. Ibid., p. 12.

39. Ibid., p. 7.

40. Ibid., p. 5 (citing Adams and Stevens, Select Documents of English Constitutional History (London, 1927), p. 148).

41. Ibid., p. 6 (quoting Hatsell (Shannon, Ireland, 1971, reprint of London 1796, 1818), vol. 4, p. 67).

42. Ibid. (citing Howell "State Trials," vol. 2, pp. 1135, 1136-37).

43. Ibid., p. 5 (citing J. Rushworth, "The Tryal of Thomas Earl of Stafford," in Historical Collections (1686), vol. 8, p. 8).

44. Ibid., p. 6 n. 14 (citing Howell "State Trials," vol. 6, pp. 865, 866-67).

45. Ibid., p. 6 n. 15 (citing Howell "State Trials" vol. 8, pp. 197, 200).

46. Ibid. (citing A. Simpson, A Treatise on Federal Impeachments (Philadelphia, 1916)(Appendix of English Impeachment Trials, p. 144)).

47. Ibid., p. 7 (citing Marshall, The Impeachment of Warren Hastings (Oxford, 1965), p. 53).

48. This assertion is in harmony with James Wilson's explanation of the impeachment process: "Impeachments, and offences and offenders impeachable, [do not] come . . . within the sphere of ordinary jurisprudence. They are founded on different principles; are governed by different maxims; and are directed to different objects." Wilson, Lectures on the Law 11, "Comparison of the Constitution of the United States with that of Great Britain," in The Works of James Wilson, vol. 1, pp. 382, 408 (J. Andrews ed. 1896).

49. Ibid.

50. Michael Gerhardt, "The Constitutional Limits to Impeachment and Its Alternatives," Texas Law Review 68 (1989): 10 (citing Peter Charles Hoffer and N. E. H. Hull, Impeachment in America (New Haven: Yale University Press, 1984), stating that "delegates to the federal convention . . . fashioned national impeachment provisions along lines laid down in states' Constitutions").

51. Ibid., p. 16.

52. Ibid., pp. 16-17.

53. Ibid.

54. See U.S. Constitution, art. II, § 4.

55. Gerhardt, "Constitutional Limits," p. 17.

56. See U.S. Constitution, art. I, § 3, cl. 6.

57. See Gerhardt, "Constitutional Limits," p. 17.

58. See U.S. Constitution, art. I, § 3, cl. 7.

59. See Gerhardt, "Constitutional Limits," p. 17.

60. Ibid., p. 23.

61. Ibid.

62. Ibid.

63. Ibid.

64. U.S. Constitution, art. I, § 2, cl. 5.

65. U.S. Constitution, art. I, § 3, cl. 6.

66. U.S. Constitution, art. I, § 3, cl. 7.

67. U.S. Constitution, art. II, § 2, cl. 1.

68. U.S. Constitution, art. II, § 4.

69. U.S. Constitution, art. III, § 2, cl. 3.

70. Gerhardt writes, "In the case of federal judges, the good behavior clause meant to guarantee not that they may be impeached on the basis of a looser standard than the president or other impeachable officials, but rather that they may be impeached on a basis that takes into account their special duties or functions." Michael J. Gerhardt, The Federal Impeachment Process: A Constitutional and Historical Analysis (Princeton: Princeton University Press, 1996), p. 106.

71. See The Antifederalist Papers, no. 63, Morton Borden, ed. (East Lansing: Michigan State University Press, 1965), p. 184.

72. Ibid., no. 64, pp. 188-191.

73. Ibid., p. 189.

74. Ibid.

75. Ibid. p. 190

76. Alexander Hamilton, Federalist no. 65, in The Federalist Papers, p. 398.

77. Ibid., no. 66, p. 402. No other formal procedural safeguards against impeachment exist. For example, neither the Constitution nor any Senate procedures require a "beyond a reasonable doubt" burden of proof for conviction. See, for example, Proceedings in the Trial of Andrew Johnson, President of the United States, before the United States Senate, on Articles of Impeachment Exhibited by the House of Representatives for High Crimes and Misdemeanors (Washington: Government Printing Office, 1868), pp. 6-10, listing of impeachment trial procedures with no mention of a burden of proof for conviction.

78. See The Antifederalist Papers, no. 66, pp. 195-196 (these are excerpts from North Carolina ratification debates).

79. Ibid.

80. Alexander Hamilton, Federalist no. 67, in The Federalist Papers, p. 404.

81. Ibid., p. 405.

82. Ibid.

83. See Buckner F. Melton, Jr., "Federal Impeachment and Criminal Procedure: The Framers' Intent," Maryland Law Review 52 (1993): 443-44.

84. Ibid., p. 444 n. 55 (citing William H. Masterson, William Blount (1954); Annals of Congress 8: 2318-19 (1799)). See also The Antifederalist Papers, no. 66, p. 195, which states that the Senate ended the William Blount case by ruling that it could not impeach senators (citing Morton Borden, The Federalism of James A. Bayard (New York: AMS Press, 1955), pp. 47-61); Gerhardt, "Constitutional Limits," p. 11 n. 31 (citing Raoul Berger, Impeachment: The Constitutional Problems (Cambridge: Harvard University Press, 1973), p. 5, which states that the Senate dismissed the impeachment charges on the grounds that "it ought not to hold jurisdiction" and that the Supreme Court later construed the dismissal to mean that a senator is not an impeachable "civil Officer." But see ibid., p. 49 n. 218, which states that "it is unclear

whether dismissal occurred because there was no jurisdiction or because no impeachable offense existed even if jurisdiction had existed." (citing Ronald Rotunda, "An Essay on the Constitutional Parameters of Federal Impeachment," Kentucky Law Journal 76 (1987): 717.)

85. See Gerhardt, "Constitutional Limits," p. 46.

86. Ibid., n. 204.

87. Ibid., pp. 48-49.

88. See U.S. Constitution, art. II, § 3.

89. See U.S. Constitution, art. I, § 2, cl. 1; art. I, § 3, cl. 1; Amend. XVII, cl. 1.

90. U.S. Constitution, art. I, § 6, cl. 1.

91. Gerhardt, "Constitutional Limits," p. 49.

92. U.S. Constitution, art. I, § 5, cl. 2.

93. Gerhardt, "Constitutional Limits," p. 49.

94. But see Melton, p. 444 n. 54 stating that even though the Senate had already expelled Blount through its expulsion power, the House wanted Blount to suffer the additional penalty of disqualification from holding any future offices, which is peculiar to the impeachment provisions (citing Hoffer and Hull, pp. 151, 156-57, 162.)

95. See House Report, Appendix B, pp. 41-57, listing the 12 impeachments that preceded the House Judiciary Committee's adoption of articles of impeachment against President Nixon, including summaries of the articles of impeachment and subsequent Senate proceedings for each of the impeached officials; Proceedings in the Trial of Andrew Johnson; The Impeachment Report: A Guide to the Congressional Proceedings in the Case of Richard M. Nixon, (compiled and edited by United Press International & The World Almanac) (1974), listing articles of impeachment and evidence heard by the House in their support; Gerhardt, "Constitutional Limits," p. 4 n. 11, summarizing the post-Nixon impeachments of Judges Harry Claiborne, Walter Nixon, and Alcee Hastings.

96. See Gerhardt, "Constitutional Limits," p. 11, listing five of those convicted: federal judges John Pickering, West Humphreys, Robert Archbald, Halsted Ritter, and Harry Claiborne; David Todd Smith, "Constitutional Law--

Impeachment Trial Clause--A Claim that Senate Impeachment Rule XI Violates the Impeachment Trial Clause Is a Nonjusticiable Political Question--Nixon v. United States," St. Mary's Law Journal 25 (1994): 855, noting Judge Walter Nixon's impeachment conviction; Alan I. Barron, "The Curious Case of Alcee Hastings," Nova Law Review 19 (1995): 873, 902, detailing the events and evidence that led to Hastings's impeachment.

97. See House Report, Appendix B, pp. 41-42.

98. See Melton, p. 443 (citing Masterson, pp. 298-99).

99. Ibid., p. 444 (citing Masterson, pp. 315-317; "Letter from William Blount to James Carey, (April 21, 1797)," in Francis Wharton, State Trials of the United States (Burt Franklin, 1970) (1849), pp. 216-17; Annals of Congress (1978) 8: 2349-50).

100. See U.S. Constitution, art. I, § 5, cl. 2.

101. See Melton, p. 444 (citing Masterson, pp. 321-22; Hoffer and Hull, p. 151).

102. Ibid., p. 444 n. 54 (citing Annals of Congress (1978) 7: 948-51).

103. House Report, Appendix B, p. 41 (quoting Annals of Congress 5: 951).

104. Ibid.

105. Ibid.

106. Ibid., pp. 42-43 (citing Annals of Congress 13: 380 (1803)).

107. Ibid.

108. Ibid. (citing Annals of Congress 13: 322).

109. Ibid., p. 43.

110. Ibid., pp. 43-45. See also William Rehnquist, Grand Inquests: The Historic Impeachments of Justice Samuel Chase and President Andrew Johnson (New York: William Morrow & Co., 1992).

111. See House Report, p. 44 (citing Annals of Congress 14: 728-29).

112. Ibid., p. 46 (citing Annals of Congress 14: 730).

113. Ibid.

114. Ibid., pp. 46-47.

115. Ibid.

116. Ibid., pp. 49-50.

117. Ibid., pp. 50-51

118. Ibid., p. 51.

119. Ibid.

120. Ibid.

121. Ibid. (citing Senate Document 1140, 62d Cong., 3d Sess. 1620-49 (1913)).

122. Ibid., p. 53.

123. Ibid., p. 54.

124. Ibid., pp. 54-55 (citing Congressional Record 76: 4913, 4914, 4925 (1933); House of Representatives Report 72d Cong., 2d Sess. 1, 13 (1933)).

125. Ibid., p. 55 (citing Congressional Record 77: 1857, 4086 (1933)).

126. Ibid.

127. Ibid.

128. Ibid., p. 56.

129. See Ritter v. United States, 84 Ct. Cl. 293, 293-95, cert. denied, 300 U.S. 668 (1936).

130. Ibid., p. 300. See also Nixon v. United States, 506 U.S. 224, 233-34 (1993).

131. See Gerhardt, "Constitutional Limits," p. 4 n. 11 (citing Congressional Record 132: S15759-62 (daily ed., Oct. 9, 1986)).

132. Ibid. (citing Hastings v. Judicial Conference of the United States, 829 F.2d 91, 95 (D.C. Cir. 1987)("giving factual background of Judge Hastings' impeachment, includ-

ing his acquittal on criminal charges on February 4, 1983")).

133. Ibid. (citing House of Representatives Resolution 87, 101st Cong., 1st Sess., 135 Congressional Record 135: H1802 (daily ed., May 10, 1989)).

134. See Proceedings in the Trial of Andrew Johnson, pp. 3-6.

135. Ibid., p. 3; William H. Rehnquist, "The Impeachment Clause: A Wild Card in the Constitution," Northwestern University Law Review 85 (1991): 903, 914.

136. See Rehnquist, "The Impeachment Clause," p. 915.

137. Proceedings in the Trial of Andrew Johnson, p. 5.

138. Ibid., p. 5.

139. Ibid., p. 6.

140. See House Report, p. 49.

141. See The Impeachment Report, pp. 1-3, 155-57, 243-44.

142. Ibid., pp. 1-3.

143. Ibid., p. 155.

144. Ibid., pp. 155-56.

145. Ibid., p. 243.

146. Ibid.

147. See John R. Labovitz, Presidential Impeachment (New Haven: Yale University Press, 1978), pp. 199 n. 44; 253-54.

148. Berger, pp. 70-71.

149. See Irving Brant, Impeachment: Trials and Errors (New York: Knopf, 1972), pp. 20-21.

150. Ibid. There also exists an argument that original intent is an invalid interpretive method since the convention's delegates decided to seal the records. The inference is that by sealing them, the delegates indicated they did not want the convention's records to guide constitutional interpretation. Without further evaluation this

argument is persuasive. But reading the debates shows that the delegates wanted the records sealed for fear that "a bad use would be made of them by those who would wish to prevent the adoption of the Constitution." Records of the Federal Convention, vol. 2, p. 648. Furthermore, James Wilson preferred the records preserved instead of destroyed so they could contradict "false suggestions [that] may be propagated." See ibid. One imagines that, if the Framers did not want us to use the convention records as interpretative materials, they would have destroyed them.

151. The presidential oath provides, "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States." U.S. Constitution, art. II, § 1, cl. 8.

152. See Ritter, 84 Ct.Cl. at 300; Nixon, 506 U.S. at 233-34.

153. See Frank Thompson and Dan Pollitt, "Impeachment of Federal Judges: An Historical Overview," North Carolina Law Review 49 (1970): 87, 107-08, 117-118.

154. Ibid.

155. See Gerhardt, "Constitutional Limits," p. 83.

156. Ibid., p. 2.

157. Ibid.

158. Alexander Hamilton, Federalist no. 65, in The Federalist Papers, p. 396.

159. Joseph Story, Commentaries on the Constitution of the United States, Ronald Rotunda and John Nowak, eds. (1833; Durham, N.C.: Carolina Academic Press, 1987), § 405, p. 288.

160. Gerhardt, "Constitutional Limits," p. 87.