

## The University of Virginia Center for Politics



### Impeachment: The Indispensable Remedy?

**Introduction:** At most jobs if you violate the terms of employment you are fired. This isn't necessarily the case with elected officials who are voted into their positions by the public. Who determines whether or not he/she has violated the terms of office? The Constitution offers instruction for how to impeach or remove a civil official but unclear advice as to when and why the process should be used. This lesson will provide students Constitutional knowledge about the impeachment process, insight into why the Founders chose to leave the determination of "high crimes and misdemeanors" for future generations to determine, and allow students to make their own conclusions about when the process should be used.

#### Objectives:

1. Students will analyze Article II, Section 4 of the United Constitution to draw conclusions about the power to impeach.
2. Students will examine articles about the politics of impeachment in order to debate whether or not impeachment is purely a political process or whether it is the "indispensable remedy" for violating the Constitution as suggested by Alexander Hamilton.
3. Students will research historical examples of impeachment in order to evaluate the extent to which the process is a political strategy to remove power from the opposing party.

#### Materials:

**Articles of interest:** (Cato Unbound is a great website to use when preparing students for debate/discussion of a political issue.)

1. Broderick, Albert. *The Politics of Impeachment*. American Bar Association Journal, Vol.60, No. 5 (May 1974), pp. 554-556,558,560.
2. Bauer, Bob. *The Politics of Impeachment*. Cato Unbound, March 8,2019.  
<https://www.cato-unbound.org/2019/03/08/bob-bauer/politics-impeachment>
3. Pilon, Roger. *Impeachment Is Not Politics*. Cato Institute, September 25, 1998.  
<https://www.cato.org/publications/commentary/impeachment-not-politics>
4. Levinson, Sanford. *Impeachment is Not Enough*. Cato Unbound, March 11, 2019.  
<https://www.cato-unbound.org/2019/03/11/sanford-levinson/impeachment-not-enough>
5. Garber, Ross. *Impeachment: Practical Considerations Support Caution*. Cato Unbound, March 13, 2019.
6. Healy, Gene. *A Constitutional Safety Valve*. Cato Unbound, March 6, 2019.

7. Lord, Debbie. *How does impeachment work? Here is the step-by-step process.* *AJC*, April 22, 2019. <https://www.ajc.com/news/national/how-does-impeachment-work-here-the-step-step-process/5wUTeEdEgheqphUL1WA0IJ/>

### Vocabulary:

*Impeachment*                      *Indispensable Remedy*                      *Public Trust*                      *Satire*  
*IAS-Impeachment Anxiety Syndrome*                      *Constitutional Nuclear Weapon*

### Procedure:

1. Read and discuss the following scenario with students.

Imagine that you have a job at the local convenience store. When you were hired you agreed to certain conditions that included arriving on time, dressing appropriately, completing certain tasks such as stocking deliveries, keeping the lavatories clean, and handling customers in a friendly manor. Most importantly you were being trusted to preserve the safety and security of the establishment. You agreed to those conditions.

On Friday, a friend asks you if you want to go to a concert. You want to go but you have to work until well after the concert begins. You decide to leave work early, lock up the store and go to the concert. The store owner stops by and sees that the store was closed before normal closing time.

What should the owner do?

Should you be fired? Why? Why not?

Should the customers have say in what happens to your employment? Why or why not?

(You should be fired for violating the agreed conditions of employment. Since it is a private business the owner shouldn't have to consult the customers. It is up to the owner and the employee to reach a conclusion.)

2. Ask students, "What can be done if an elected official does something improper during his/her term of office?" Do the same standards apply for elected officials. If one breaks the oath of office, what happens?

Read Article II, Section 4 of the U.S. Constitution.

**Article II, Section 4.** Text of **Article 2, Section 4:** 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. ... A conviction in the Senate requires 2/3 of the vote.

Does this answer our initial question?

What does impeachment mean?

What additional questions do we have about how to determine whether or not a publically elected official should be removed from office?

Who gets to decide whether the elected official is guilty?

Why do you think the writers of the Constitution left this section so vague? Why didn't they specifically list the crimes that were impeachable?

3. Using the PowerPoint, display the How Impeachment Works slide from the Atlanta-Journal Constitution. Have students read the article, examine the slide and discuss: Why does the Constitution define treason, but not bribery or high crimes and misdemeanors?
4. Take a look at what a handful of Founders thought about Impeachment. Like most aspects of the Constitution, they were not all in agreement. The final result written into the Constitution was their compromise of ideas in 1787. Things have changed in the last 230 years- might it be time to re-visit the concept of impeachment?  
(Flip through the slides and show the compromise reached by Alexander Hamilton.)
5. The "Things to Ponder" slide asks students to think about possible changes to the impeachment process. Ask students if they have suggestions for changing or reasons for keeping it the same.
6. Impeachment Anxiety Syndrome slide. Why are Americans anxious about impeachment? What are the benefits of impeachment? What are the drawbacks? Should the process be handed over to the judiciary to reduce the political motivation to impeach?
7. Examine the two times in history when Presidents have been impeached. What do you notice? Neither was convicted or removed from office. What were the political ramifications of impeachment in both cases? Does the Impeachment power protect the American people? (There are various answers to this question)

8. Assessment: Write an Op-Ed for a local paper addressing whether or not the Impeachment Process as defined in the U.S. Constitution is either a tool to remove a President who is not living up to the Oath of Office or an opportunity for the opposing party to remove a political foe from office.
9. EXTENSION: Using Talking Turkey resources hold a political discussion on the effectiveness of the impeachment process by following the current debate in the United States. The country is divided over whether or not President Trump should be impeached. Instead of discussing the President- discuss the process and whether or not the people will be served by impeachment. The articles listed in the materials from Cato Unbound will help students solidify their positions on impeachment.

# How does impeachment work? Here is the step-by-step process

By

• **Debbie Lord, Cox Media Group National Content Desk**

Here is a look at what impeachment is and why it doesn't necessarily mean removal from office.

## **How does impeachment work?**

Impeachment was established by the framers of the Constitution as a way to accuse a president of a crime and to hold a trial to determine if he is guilty of that crime. The Constitution lays out two specific actions, treason and bribery, that could lead to impeachment and removal of a president from office. (Article II, Section 4)

The system also allows for a broader category to accuse a president of crime, although that category is vague and difficult to define.

A president can also be charged with and found guilty of “high crimes and misdemeanors.” What exactly constitutes high crimes and misdemeanors is not defined in the Constitution, making impeachment on that basis more difficult.

By design, it is not easy to get rid of a president. Here are the steps in the process for impeaching a president:

1. First, an impeachment resolution must be introduced by a member of the House of Representatives.
2. The speaker of the House must then direct the U.S. House Committee on the Judiciary (or a special committee) to hold a hearing on the resolution to decide whether to put the measure to a vote by the full chamber and when to hold such a vote.
3. A simple majority of the Judiciary Committee must approve the resolution.
4. If the Judiciary Committee approves the resolution, it moves to a full vote on the House floor.
5. If a simple majority of the those present and voting in the House approve an article of impeachment, then the president is impeached.
6. The procedure then moves to the Senate where a “trial” is held to determine if the president committed a crime. There is no set procedure for the trial. How it is conducted would be set by the Senate leadership.

7. Members of the House serve as “managers” in the Senate trial. Managers serve a similar role as prosecutors do in a criminal trial, they present evidence during the procedure.
8. The president would have counsel to represent him at the Senate process.
9. The chief justice of the U.S. Supreme Court presides over the trial.
10. Senators listen to the evidence presented, including closing arguments from each side and retire to deliberate.
11. Senators then reconvene and vote on whether the president is guilty or not guilty of the crimes he is accused of. It takes a two-thirds vote of the Senate to convict. If the president is found guilty, he is removed from office and the vice president is sworn-in as president.

The hearing in the Senate, along with a charge in the House that the president has committed a crime is not a legal one. No penalty, other than removal from office, is brought against a president in an impeachment hearing.

Impeachment trials have been held twice in the country’s history -- for President Andrew Johnson and for President Bill Clinton -- and both ended in acquittals: meaning the presidents were impeached by the House, but not convicted and removed from office by the Senate. One vote kept Johnson from being convicted of firing the secretary of war in 1868, which went against a tenure act.

In 1999, the Senate was 22 votes shy of convicting Clinton of perjury and obstruction of justice stemming from a sexual harassment lawsuit filed against him by Paula Jones.

<https://www.ajc.com/news/national/how-does-impeachment-work-here-the-step-step-process/5wUTeEdEgheqohUL1WA0IJ/>

# A Constitutional Safety Valve

Gene Healy • March 6, 2019 •

Impeachment is a constitutional safety valve, not to be triggered lightly, but available for public protection when needed. Yet judging how they talk about it, many of America's political and intellectual leaders have come to view the remedy itself as a menace to ordered liberty—a sort of doomsday device that the Framers, in their perversity, wired into our Constitution. NYU Law's Bob Bauer terms this orientation **“Impeachment Anxiety Syndrome,”** a coinage that, if anything, understates its intensity. Our political culture has drifted past a prudent reluctance to “normalize” impeachment, toward something approaching mortal fear of the impeachment process.

“Be very careful before you move the country toward impeachment,” former independent counsel **Ken Starr warns,** “It's inherently divisive.” (*Now* he tells us.) In fact, says Bill Clinton's erstwhile nemesis, **“Impeachment is hell.”**

In early 2018, after delivering **a fiery speech** likening President Trump to *Stalin*, then-Senator Jeff Flake (R-AZ) clarified his position: he's “not one of those who run around calling for our president to be **impeached**. He's done nothing in my view that would warrant that.” That March, when Trump appeared poised to fire special counsel Robert Mueller, Flake conceded that impeachment might be a last resort, but **sounded positively panic-stricken** about the prospect: “Nobody wants to talk about it. I don't want to talk about it. As soon as you mention the I-word, that's all people want to talk about.” Running for a Senate seat last Fall, Mitt Romney was less agitated, if only because he found the very idea inconceivable: “I don't think it makes sense to be talking about impeachment, not for **a sitting president**”—a stipulation that would somewhat hamper the remedy's usefulness.

Impeachment aversion isn't limited to Trump's critics on the Right. Even liberal comedians and professional Blue-Team partisans recoil from “I-word” talk. “If Donald Trump is to leave office, it should be through political means,” says *Late Show* host **Stephen Colbert,** not “extreme constitutional remedies.” “If we ‘normalize’ impeachment as a political tool,” **frets** former Obama campaign guru David Axelrod, “it will be another hammer blow to our democracy.” One could hardly find a more rabid

critic of the current president than Harvard's Laurence Tribe, who's **variously described** Trump as "batshit crazy," a "crime boss," and "compromised by foreign dictators." Yet Tribe, too, insists that impeachment should only be approached in fear and trembling. In their 2018 book **To End a Presidency**, Tribe and coauthor Joshua Matz admonish that impeachment is "a great power and a terrible one," its use fraught with "extraordinary danger." If, God forbid, we ever need to deploy it, "we can hope only that **the nation survives** with its spirit intact and the strength to rebuild all that's broken."

Is impeachment really as grave as all *that*? Our Constitution's Framers were considerably less angsty about it: few, if any, viewed the prospect of a presidential pink-slip with the unbridled horror now common among political and intellectual elites. At the Philadelphia Convention, Massachusetts' Eldridge Gerry **insisted**: "A good magistrate will not fear [impeachments]. A bad one ought to be kept in fear of them." Benjamin Franklin viewed the clause as **"favorable to the executive,"** providing for "regular punishment... when his misconduct should deserve it, and for his honorable acquittal when he should be unjustly accused." North Carolina's Hugh Williamson thought there was "more danger of **too much lenity** than of too much rigour towards the President." Given our paltry record of presidential impeachments—only three serious attempts in 230 years—Williamson was more right than he knew.

To be sure, the attempted removal of a "sitting president" was serious business, never to be undertaken casually. In **Federalist 65**, Hamilton writes of "the awful discretion, which a court of impeachments must necessarily have, to doom [the accused] to honor or to infamy." He also believed that discretion to be **necessary**, periodically, as "an essential check in the hands of [the legislative] body upon the encroachments of the executive."

In that essay, Hamilton described impeachment's scope as involving, "those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust." By its nature, such a proceeding "can never be tied down by such strict rules... as in common cases serve to limit the discretion of courts."



In fact, the constitutional grounds for impeachment are much broader than popularly understood. In its comprehensive 1974 [report](#) on the subject, the House Judiciary Committee staff identified three categories of misconduct held to be impeachable offenses in American constitutional history: (1) exceeding the constitutional bounds of the office's powers; (2) using that position for personal gain; (3) "behaving in a manner grossly incompatible with the proper function and purpose of the office."

Any citizen following our public debate—listening to [Alan Dershowitz](#) or even [Nancy Pelosi](#), for example—would come away with a much narrower understanding: one that limits constitutional impeachment to large-scale, criminal abuses of official power.

But had the Framers restricted impeachable offenses to crimes, for example, impeachment would have been a dead letter from the start. In the early years of the republic, there were [hardly any federal crimes](#) on the books. Of our first three impeachment cases (1797–1805) only one involved anything that could be described as criminal behavior. And throughout our entire constitutional history, according to the [Congressional Research Service](#), fewer than a third of the impeachments approved by the House "have specifically invoked a criminal statute or used the term 'crime.'"

The early cases, in the decade and a half following ratification, reflect a liberal understanding of "high Crimes and Misdemeanors." In fact, the first impeachment case to result in conviction and removal from office involved a federal judge whose main offense was showing up to work drunk and ranting like a maniac in court. That was [John Pickering](#), who, according to the [articles of impeachment](#) passed by the House in 1803, had revealed himself to be a man "of loose morals and intemperate habits," guilty of "high misdemeanors, disgraceful to his own character as a judge." And throughout American history, federal officers have been impeached for offenses ranging from petty corruption, to neglect of duty, to withholding information from Congress, and degrading public confidence in their fitness to wield power.

At the Constitutional Convention, James Madison described impeachment as an ["indispensable"](#) provision for "defending the Community against the incapacity, negligence, or perfidy of the chief Magistrate." Unlike modern commentators, Madison

worried less about the destabilizing effects of removal than the perils of keeping an unfit president in office. The unitary nature of the presidency made incapacity or corruption far more dangerous in the executive branch than in Congress or the judiciary. “The Executive magistracy... was to be administered by a single man,” and “loss of capacity” in that case “might be fatal to the Republic.”

My recent [study on impeachment](#) takes its title, “Indispensable Remedy,” from the adjective that both Madison and [George Mason](#) used to describe the constitutional means for presidential removal.

And yet, when it comes to the chief executive officer of the federal government, we’ve all but dispensed with the option. In the 230 years since the Constitution’s ratification, we’ve impeached only two: Andrew Johnson in 1868 and Bill Clinton 13 decades later. True, the impeachment process drove Richard Nixon from office, even though he resigned before the full House could vote—so call it three. That still means that only around one in 15 presidents has ever faced a serious threat of removal from office.

Historically, three quarters of American presidents never even faced a *theoretical* threat of removal. Though any member of the House can introduce articles of impeachment, it’s vanishingly rare [that anyone tries](#). In our entire constitutional history, only 11 of 44 presidents have had articles formally drawn up against them.

In *To End a Presidency*, Tribe and Matz argue that lately, however, the I-word has become distressingly “normalized”—“modern Americans live in the post-Clinton age of a permanent impeachment campaign.” There’s no doubt that impeachment talk has become far more common since Donald J. Trump’s election—its prevalence is another indication that this presidency, and perhaps the reaction to it, is “not normal.”

But one has to strain to unearth evidence of “the normalization of impeachment” in the post-Clinton, pre-Trump era. The four presidential terms prior to Trump’s ascension saw a total of [three impeachment resolutions](#) formally introduced in the House, all against President George W. Bush (all of which died in committee); [zero](#) for President Obama. “Throughout Obama’s second term,” Tribe and Matz write, “impeachment was

unavoidable everywhere except in the halls of Congress, where no one dared propose it”—in other words, everywhere but where it might matter.

If impeachment was supposed to be indispensable, why have we deployed it so infrequently? One obvious answer is that our Constitution makes it very difficult to remove a president. Conviction in the Senate **requires** “the Concurrence of two thirds of the Members present.” And most people believe—**incorrectly**, in my view—that without a Senate conviction, impeachment by the House is an act of futility.

It’s likely that most of the Framers didn’t appreciate the effect of the supermajority requirement, which came late in the Convention and passed without comment, **seemingly unnoticed**. But the high structural barrier alone can’t explain why presidential impeachments have been so extraordinarily rare.

Our Constitution makes it hard—perhaps *too* hard—to remove a president. But we’ve made it harder still by erecting barriers to impeachment nowhere to be found in the Constitution. Among those self-imposed restraints are the legal misconceptions mentioned above, such as the notion that impeachment is reserved solely for felonious abuses of official power. But cultural superstitions surrounding the remedy have been at least as significant a disincentive as legal error.

Impeachment talk is tinged with suggestions of blasphemy or violence. The euphemism “I-word” dates back to at least the late-80s “when it was used with reference to Democrats’ reluctance to call for Reagan’s impeachment during the Iran-Contra scandal,” according to **the OED’s blog**. It’s “a rhetorical device” reflecting the fact that “earnest discussion of the possibility of impeachment is still regarded by many politicians and journalists as a bridge too far,” a taboo that extends “even to broaching the topic of impeachment.” Well before Trump, impeachment had become the constitutional procedure that dare not speak its name.

On the rare occasions that the subject is broached, normally sober and judicious scholars resort to bloody hyperbole. Impeachment is “**high-risk major surgery**”; or “the political equivalent of capital punishment,” allowing Congress “**to decapitate** the executive branch in a single act. It’s worse than that, NYU’s Ronald Dworkin insisted in 1998: “the power to impeach a president is **a constitutional nuclear weapon**.”

Now, as in past impeachment debates, pundits, pols, and professors conjure up specters of wounded democracy and constitutional collapse, describing impeachment as **“reversing an election”** and **“overturning the will of the people.”** By “going there,” we risk **“opening Pandora’s Box”** and unleashing a host of evils, including, quite possibly, **civil war**. At the very least, Tribe and Matz argue, “there can be little doubt that a successful impeachment campaign would inflict enduring national trauma.” But I, for one, doubt it. Such fears are radically overblown. Impeachment neither vandalizes democracy nor threatens constitutional crisis, nor does our (admittedly limited) experience suggest that it’s especially destabilizing.

Whatever one’s assessment of the current president, the notion that impeachment is a “constitutional nuclear weapon” is unhealthy for our democracy. Over the last century, the American presidency has been transformed from a comparatively modest “chief magistrate” into the “most powerful office in the world.” And, as the power of the office has grown, “Impeachment Anxiety Syndrome” has grown with it, ensuring that the officeholder enjoys greater job protection than virtually any other American.

It’s employment-at-will for most of us, termination for-cause at the commanding heights of the economy. But we’ve somehow managed to convince ourselves that the one job in America where you have to commit a felony to get fired is the one where you actually get nuclear weapons.

That is not how our system is supposed to work, it’s not what our Constitution requires, and it’s not what we should accept for an office as powerful and dangerous as the American presidency.

<https://www.cato-unbound.org/2019/03/06/gene-healy/constitutional-safety-valve>

Opinion/Editorial:

The Impeachment Clause as a ‘Indispensable Remedy’ to Remove a President for Violating the Oath of Office

OR

The Impeachment Process as a ‘Constitutional Nuclear Weapon’ to Remove a Political Foe

Topic	Criteria	Possible Pts.	Earned
Understanding of Constitutional definition of Impeachment	Describes the Founders compromise on removal from office, areas of disagreement, and historical context		
Identifies Impeachment as a way to punish a leader for criminal/Unconstitutional acts or as a political weapon	Gives a cogent and understandable reason why he/she/they holds that position supported by facts		
Historical examples of Impeachment	Briefly discusses the two cases of Presidential impeachment and how they affect their position.		
Persuasive Argument	Argument for either position is well reasoned, supported by facts, and is successful in persuading others of his/her/their position		
Other			

