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IMPEACHMENT IN AMERICA, 1635-1805. By *Peter Charles Hoffer* and *N.E.H. Hull*. New Haven, Conn.: Yale University Press. 1984. Pp. xiv, 325. \$30.

The legislature's power to impeach, although rarely exercised, provides perhaps the most powerful weapon available to any branch of the federal government.¹ The proceedings initiated against President Nixon in 1974 focused the attention of many legal scholars on the origins and functions of impeachment.² A few cases were well-known, most notably the nineteenth-century impeachments of President Andrew Johnson and Supreme Court Justice Samuel Chase. But the origins of the device, and the circumstances surrounding its importation from England to America, were not as clear. Most scholars assumed that the Framers derived the idea of impeachment directly from English law.³ However, as Peter Charles Hoffer and N.E.H. Hull⁴ convincingly demonstrate in *Impeachment in America, 1635-1805*, the Constitution's formula for impeachment was not merely an adoption of English practice. Rather, American impeachment has a distinctly American flavor, developed from the early experience of the colonies

examining the issue. Still, his reflections on these questions lend valuable perspective on the narrower analysis which occupies the bulk of the work.

1. The main constitutional provision for impeachment reads:

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.

U.S. CONST., art. II, § 4.

2. See, e.g., C. BLACK, *IMPEACHMENT* (1974); J. LABOVITZ, *PRESIDENTIAL IMPEACHMENT* (1978).

3. For a thorough modern analysis of the Constitution's impeachment formula, see R. BERGER, *IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS* (1973). Berger attempts to determine the intent of the Framers in article II, section 4, largely by reference to English impeachment law.

4. Peter Charles Hoffer is an associate professor of history at the University of Georgia. N.E.H. Hull formerly served on the faculty at the University of Georgia and Vanderbilt University, and is currently attending law school.

and modified by experimentation in state constitutional law prior to the Constitutional Convention in 1787.

Despite their thesis, the authors begin their tale in England. Impeachment originated in the fourteenth century in the House of Commons, with trial in the House of Lords. The Commons could impeach for a variety of offenses, ranging from treason to trespass. Contrary to the American model, anyone could be impeached, even private citizens. Also contrary to the American scheme, a variety of penalties could be imposed, including (in rare cases) capital punishment. Although in theory anyone could be impeached by the Commons for any reason, in practice impeachment was reserved for offenses perceived to endanger the government, or the public's trust in government.

Hoffer and Hull report that impeachment in America "began almost inadvertently . . . as a practical, local response to apparent misconduct in a high place" (p. 15). The first case involved Virginia's colonial governor, John Harvey, who after a clash with political adversaries was accused of various fiscal abuses of public power. Several articles describing Harvey's misconduct were prepared, and the governor was sent to England to be tried. But as subjects of the Crown, the colonists had no power to remove Harvey from office; the governor thus retained his office without undergoing the ordeal of trial before the Lords.

This initial failure did not effectively deter the colonists. Several legislative attempts to remove government officials in Maryland resulted in trial before that colony's upper house. Similar cases arose before the end of the seventeenth century in Pennsylvania, the Carolinas, and again in Virginia. The authors contend that these cases, although a deviation from the established English precedent that only the House of Commons could impeach, do not represent a conscious attempt by colonial legislators to expand their power base. Rather, the colonists grasped impeachment as an expedient method of controlling official misconduct. Hoffer and Hull insist that colonial managers "did not know that only the Commons could impeach" (p. 27).

This conclusion is speculative, given the sparse documentation attending most early efforts at impeachment in America. More important to the authors' argument, however, are the eighteenth-century cases. Tighter controls exerted by the Crown over colonial lawmaking authority deterred American impeachments somewhat during the first half of that century. A few cases were brought, but all resulted in failure or appeal to English authority. The authors succeed in drawing a few conclusions about the development of American impeachment doctrine from these aborted cases, but their efforts appear strained — England's asserted legal supremacy over the colonies dur-

ing this period effectively stifled the development of an independent American approach to impeachment.

As the Revolution approached, however, the colonists became more willing to flout English authority. Legislatures in several colonies openly clashed with royal governors. A typical and significant example took place in Massachusetts, where the lower house of the legislature impeached Peter Oliver, the recently appointed chief justice of the colony's General Court. The crux of the struggle was not official wrongdoing but rather a conflict between the legislature and the royal governor over control of the judiciary. Both the house and the governor claimed to be the only lawful source of the justice's salary. When Oliver accepted the Crown's money, the legislature impeached.

At first glance, Oliver's case, involving an overtly political struggle for control, seems far removed from the seventeenth-century impeachments for official misconduct. For Hoffer and Hull, however, the revolutionary impeachments reveal an important trend in the use of impeachment in America. As support for revolution increased, the authors argue, the colonists turned to impeachment because they recognized it as an important weapon in the struggle for independence from the Crown's control. Rather than adopting English impeachment practice, the colonists *adapted* it to their own ends.

The authors unfold their argument chronologically, in a conscious attempt to chart the increasing divergence of American and English impeachment doctrine. Their approach succeeds, particularly when they describe the tumultuous period of state constitutional development from 1776 to 1787. During that period, the states experimented with several different formulas for impeachment. Many delegates to the Constitutional Convention played an important role in the development of the fledgling states' impeachment doctrines. As Hoffer and Hull point out, several of the Framers themselves experienced close brushes with impeachment at the state level during this period. The authors posit that these experiences, not English precedent, planted the seeds of the federal Constitution's approach to impeachment. Although the Framers recognized the importance of impeachment as a method of controlling official misbehavior, they were also aware of its central danger: its use as a partisan political tool to impose the will of the majority. The authors thus demonstrate the Framers' intent to make impeachment an extraordinary device, difficult for the majority to employ to further purely political ends.

The final section of *Impeachment in America* recounts the most famous federal impeachment case of the period: the impeachment and acquittal of Federalist Supreme Court Justice Samuel Chase. Although this story has been told before,⁵ Hoffer and Hull place the

5. See, e.g., J. ELSMERE, JUSTICE SAMUEL CHASE 159-325 (1980).

incident in the chronological context of the development of impeachment's role in the federal system. At the same time, they portray the flavorful interplay of personalities involved in the impeachment and the trial itself. The authors employ this storytelling style throughout the book with great success.

Impeachment in America is one of those unusual books of scholarship that succeeds on two levels; it makes an important contribution to the literature while at the same time entertaining its readers. Woven around the novel yet convincing thesis that American impeachment is an American creation are stories of political scandal, legal combat, and judicial inebriation. In part this style may stem from the fact that the authors are historians, not lawyers; at times they seem less interested in the legal significance of their thesis than in the personalities they describe. Nevertheless, their work also contributes significantly to an understanding of the role impeachment should play in American government.