IMPEACHMENT AS A POLITICAL WEAPON

THESIS

Presented to the Graduate Council of the
North Texas State University in Partial
Fulfillment of the Requirements

For the Degree of

MASTER OF ARTS

By

Sally Jean Bumpas Collins, B. A.
Denton, Texas

December, 1977

2.PU.

Collins, Sally J. B., Impeachment as a Political Weapon. Master of Arts (History), December, 1977, 135 pp., appendices, bibliography, 168 titles.

This study is concerned with the problem of determining the nature of impeachable offenses through an analysis of the English theory of impeachment, colonial impeachment practice, debates in the constitutional convention and the state ratifying conventions, The Federalist Papers and debates in the first Congress. In addition, the precedents established in American cases of impeachment particularly in the trials of Judge John Pickering, Justice Samuel Chase and President Andrew Johnson are examined.

Materials for the study included secondary sources, congressional records, memoirs, contemporary accounts, government documents, newspapers and trial records. The thesis concludes that impeachable offenses include non-indictable behavior and exclude misconduct outside official duties and recommends some alternative method of removal for federal judges.

TABLE OF CONTENTS

CHAPTER I

HISTORICAL BACKGROUND OF IMPEACHMENT

"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."[1] The interpretation of this statement, one of six clauses in the Constitution that specifically mention impeachment, has perhaps been the subject of more debate since 1789 than any other in that document.

> Impeachment is the process by which the House of Representatives by majority vote formally brings charges against a federal official, thereby impeaching him. He is then tried by the Senate on those charges. If found guilty by a two-thirds vote of the Senators present, the officer is removed from office and may be disqualified from holding any future federal office.[2]

This process has been carried out only thirteen times in the history of the United States under the Constitution, and all but one case reached the Senate.[3] Of these twelve cases, two were dismissed, six resulted in acquittals and four in conviction. Federal judges have been the target of ten impeachments,

---

[1]U.S., Constitution, Article 2, Section 4.

[2]Robert A. Diamond, ed., Impeachment and the U.S. Congress (Washington, D.C.: Congressional Quarterly, 1974), p. 1.

[3]See Appendix I, "Impeachments in American History."

while the other officers impeached include one president, one cabinet member and one senator. All four of the impeachment convictions were federal judges.[4] In addition, there have been approximately fifty-four cases of congressional investigation into possible impeachable misconduct.[5]

Each time an impeachment investigation is opened, the debate over Article 2, Section 4 and other related constitutional provisions is renewed.[6] Since "bribery" is a well-defined act, and "treason" is defined in the Constitution (Article 2, Section 3), the greatest source of conflict has been in the meaning of "other high Crimes and Misdemeanors." No one has determined the precise definition of an "impeachable offense," and this has been the major issue in the history of the impeachment process in the United States. The conflict is between broad constructionists, who interpret impeachment as a political weapon, and narrow constructionists, who view impeachable offenses as being limited to indictable offenses.[7] Because it is generally agreed that judges are included in the term "all civil officers," and the Constitution provides that "Judges shall hold their offices during good behavior . . .,"

---

[4]Diamond, Impeachment, p. 2.

[5]Paul S. Fenton, "The Scope of the Impeachment Power," Northwestern Law Review 65(1970):719.

[6]See Appendix II, "The Constitution on Impeachment."

[7]Diamond, Impeachment, p. 6.

another major issue is whether impeachment excludes other means of removal for federal judges.[8]

The source of these conflicts does not go back merely to 1789 and the constitutional convention but rather to the earliest uses of impeachment in England. Impeachment is not an American institution, but, like other laws and customs in American practice, is one borrowed from the English. Although the English have used it only once since the birth of the American Constitution, it can be traced to 1376. American colonial governments had incorporated English impeachment procedures and continued them in their state constitutions after 1776.[9] Delegates at the constitutional convention in Philadelphia discussed impeachment and eventually adopted the present provisions on impeachment. The impeachment debates centered mainly around the president, and the delegates spent only a relatively small portion of time discussing impeachable crimes.[10]

During the first session of the first Congress, representatives revived and debated the subject of impeachment during a discussion of the removal power of the president.[11] This is significant because several of the delegates to the constitutional convention were members of this first Congress.

---

[8]U.S., Constitution, Article 3, Section 1.

[9]Diamond, Impeachment, p. 3.

[10]James Madison, Notes of Debates in the Federal Convention of 1787 (1840; reprint ed., Athens, Ohio: Ohio University Press, 1966), pp. 331-35, 605-06.

[11]U.S., Congress, House, Annals of Congress, 1st Cong., 1st sess., 1789, pp. 383-99, 473-614.

Precedents used in answering the questions that have been raised in impeachments and impeachment attempts in American history include English impeachment law, colonial practice, debates in the constitutional convention, and discussions in the first Congress. The Constitution has been interpreted and misinterpreted for over 150 years in an attempt to determine exactly the purpose intended and the crimes included in the provisions concerning impeachment. At least three times in American history this power has been misused. Politicians have attempted to set a precedent by reducing impeachment to a political weapon to be used by the majority party in Congress against undesirable judges and uncooperative presidents. The impeachment trials of Judge John Pickering, Justice Samuel Chase, and President Andrew Johnson are significant in establishing and evaluating the intent of the constitutional framers and in determining that impeachment is not to be used merely for political reasons.

The trials of Chase (1805) and Johnson (1868) are noteworthy because both were surrounded by intensely partisan politics. Chase, who was impeached and acquitted for partisan conduct on the bench, was a Federalist victim of attacks on the Supreme Court by Jeffersonian Republicans. Johnson, a victim of Radical Republicans who opposed his reconstruction policies after the Civil War, was impeached and acquitted for violation of the tenure of office act.[12]

---

[12]Diamond, Impeachment, p. 2.

As recently as 1974, the investigation of President Richard M. Nixon by the House judiciary committee again raised the issue of impeachment. The committee debated impeachment and adopted articles before Nixon's resignation.[13] Again, a major issue concerned impeachable offenses and the question of whether or not indictable crimes are prerequisite to an impeachment conviction.

There have been several proposed laws and amendments concerning impeachment, but in fear of disturbing the constitutional independence of the president and the judiciary, Congress defeated each of them. Constitutional change should certainly come only after careful thought and study, but the Constitution should also be useful, workable and reasonable. This is a major principle of constitutional interpretation which does not conflict with reverence for the "intent of the framers," because in reality, their primary intent was to produce such a Constitution.[14]

The history of impeachment begins in England in 1376 during the reign of Edward III (1327-1377). The convictions of Richard Lyons, Lord Latimer and Lord Neville mark the earliest instances of an impeachment trial by the House of Lords upon a definite

---

[13]U.S., Congress, Congressional Quarterly Almanac, 93d Cong., 2nd sess., 1974, pp. 894-96.

[14]Charles L. Black, Impeachment: A Handbook (New Haven and London: Yale University Press, 1974), p. 4.

accusation made by the House of Commons.[15] By the reign of Henry IV (1399-1413), Parliament firmly established impeachment as a procedure by which the Commons instituted the proceedings, and the Lords tried the cases.[16] The English conceived of impeachment as essentially a political weapon, because the objects of the impeachment procedures were beyond the reach of ordinary criminal redress. It was an outgrowth of the king and his council becoming the "court for great men and great causes."[17] Both public and private persons, however, were subject to impeachment. A majority vote produced conviction, and there was no limit on punishment.[18] Because of a decline in the prestige and influence of Parliament, impeachment fell into disuse during the Tudor Era. Many great state trials and the use of the bill of attainder characterize this period.[19]

The modern history of the English law of impeachment came with the revival of Parliament's power during the reign of James I (1603-1625). From 1621 to 1805, there were fifty-four

---

[15]John D. Feerick, "Impeaching Federal Judges: A Study of the Constitutional Provisions," Fordham Law Review 39(1970):5; Hannis Taylor, "The American Law of Impeachment," North American Review 180(1905):503.

[16]Feerick, "Impeaching Judges," p. 5.

[17]Raoul Berger, "Impeachment for 'High Crimes and Misdemeanors,'" Southern California Law Review 44(1971):400.

[18]Feerick, "Impeaching Judges," pp. 5-6.

[19]Taylor, "American Law," pp. 503-04; Feerick, "Impeaching Judges," p. 6; A bill of attainder is a legislative act inflicting punishment on specific individuals without judicial trial.

trials involving both officeholders and private individuals. The last case of parliamentary impeachment in England occurred in 1805 with the trial of Lord Melville, First Lord of the Admiralty, who was impeached and acquitted for embezzling money from the naval treasury. Since that time, impeachment has ceased to be a part of the (unwritten) English constitution.[20] The last great impeachment trial in England was that of Warren Hastings, Governor-General of India for thirteen years. His trial for high crimes and misdemeanors began in 1787, shortly before the American constitutional convention, and lasted until 1795, when he was acquitted on charges of oppression, cruelty, bribery and fraud in his capacity as colonial administrator of India.[21]

Of the impeachment cases involving public officials, a majority were political in nature; for example, one party would try to crush his opponents in office by impeaching them for high treason.[22] Between 1388 and 1680, Parliament employed the impeachment process against the judiciary for both treason and high crimes and misdemeanors.[23] It was at an impeachment trial and not an ordinary criminal trial where the phrase "high crimes and misdemeanors" was first used in 1388. The words appear to

---

[20]Taylor, "American Law," p. 502; Dictionary of National Biography, s.v. "Dundas, Henry, First Viscount of Melville."

[21]Feerick, "Impeaching Judges," p. 9; Diamond, Impeachment, p. 3.

[22]Taylor, "American Law," p. 504.

[23]Feerick, "Impeaching Judges," pp. 6-7.

be confined to impeachments without roots in the ordinary criminal law and with no relation to whether or not an indictment would apply in the particular case.[24] Examination of the principal impeachment articles in approximately 100 English cases of both judicial and nonjudicial officials reveals that either treason or high crimes and misdemeanors were charged in over three-fourths of the cases. Those parties who had been charged with high crimes and misdemeanors had allegedly been involved in criminal acts, grave misuse of official position or treasonous-like conduct.[25] Prior to adoption of the American Constitution, none of the English cases resulted in acquittal, because the offenses in the articles were not indictable; in fact, ten persons were convicted of nonindictable offenses.[26]

Sir William Blackstone in his Commentaries on the Laws of England suggested that impeachable offenses do not have to be indictable, when he wrote that "it may happen that a subject, entrusted with the administration of public affairs, may infringe the rights of the people, and be guilty of such crimes, as the ordinary magistrate either dares not or cannot punish. Of these the . . . house of commons . . . can therefore only impeach." Impeachment provides the only means of punishment of officials for high crimes and misdemeanors which are nonindictable

---

[24]Berger, "High Crimes and Misdemeanors," pp. 400, 403.

[25]Feerick, "Impeaching Judges," pp. 7-8.

[26]Alexander Simpson, "Federal Impeachments," University of Pennsylvania Law Review 64(1916):681-82.

offenses outside the power of the "ordinary magistrate," who can punish only indictable crimes.[27]

Since the impeachment law of the United States came from the parliamentary law of England, English law should set the standard for determining impeachable offenses. In other words, the question asked in each American impeachment case concerns whether the charges constitute impeachable offenses as they were defined in parliamentary law. The real dilemma is that the term "high crimes and misdemeanors" was not specifically defined, but it was understood by both American and English constitutional lawyers at the time of the Revolution. The best way to interpret "high crimes and misdemeanors," then, is to examine the English precedents. Since impeachment of private individuals is not practiced in the United States as it was in England, those cases cannot be used as precedents. The political impeachments of nonjudicial officers would seem to serve as precedents, but these were used in the case of President Andrew Johnson, and they proved vague and unsatisfactory when applied to American custom and practice.[28]

The impeachment cases of English judges, then, could be analyzed for clues to the interpretation of "high crimes and misdemeanors," especially because three-fourths of American impeachment cases have been against judges. Again, these

---

[27]St. George Tucker, Blackstone's Commentaries, 5 vols. (1803; reprint ed., New York: Augustus M. Kelley, 1969), 5:260-61.

[28]Taylor, "American Law," pp. 502-04.

precedents are not entirely applicable to American cases. In England, judges were subject to removal by the Crown, in addition to removal through impeachment. This was changed in the eighteenth century with the act of settlement (1701), after which the king could no longer remove judges at his will. The law provided that judges' commissions were made during good behavior, but the "address" of both Houses of Parliament could remove judges for any reason.[29] Therefore, English judges were removable by either impeachment for "high crimes and misdemeanors" or by "address" for all lesser acts of personal misconduct.[30] For charges of judicial misconduct in office other than bribery, there are only two judicial impeachments in English history. There are no cases in English parliamentary law which suggest that a judge's personal misconduct outside of his official duties constituted an impeachable high crime or misdemeanor. "High crimes and misdemeanors" not included in personal misconduct required the use of impeachment as a remedy, while all misconduct outside of "high crimes and misdemeanors" called for removal by "address."[31]

Eighteenth century Englishmen as well as American colonials clearly understood this dual method of removal of English judges from 1701 until American independence in 1776. Americans accepted this view as evidenced by their reference to it in state

---

[29]Feerick, "Impeaching Judges," pp. 10-12.

[30]Taylor, "American Law," p. 507.

[31]Ibid., pp. 505-06.

constitutions and their use of it prior to the constitutional convention of 1787. The framers considered this dual system when writing the Constitution, but they rejected it for fear that the two legislative houses might improperly unite to remove a judge, and thus, the independence of the judiciary would be weakened. The framers ultimately adopted "high crimes and misdemeanors" as the standard for impeachable offenses with the construction given in the English system.[32] The American Constitution thus provides no method of removing judges for unofficial personal misconduct, in contrast to the English system.

The term "high crimes and misdemeanors" is difficult to define. A study of English precedents reveals the following: they were first used and confined to impeachments; they were not specifically defined; they included both indictable and nonindictable offenses; and, when applied to judges, they did not include lesser unofficial acts of personal misconduct. With the knowledge of these English precedents, the delegates of the Philadelphia convention incorporated impeachment into the American Constitution.

---

[32]Ibid., pp. 507-09.

CHAPTER II

THE IMPEACHMENT ISSUE IN EARLY AMERICAN HISTORY

In 1789, during the English impeachment trial of Warren Hastings, fifty-five delegates met in Philadelphia to revise the Articles of Confederation and establish a more workable government. Among this distinguished group were those who had served as governors, representatives to Congress, and state constitutional writers within their respective states. Most of the delegates had been merchants, manufacturers, planters, bankers and lawyers. During the four month convention, which was closed to the public, the delegates proposed, wrote, debated, rewrote and approved the provisions of the American Constitution. James Madison, delegate from Virginia, was probably the most learned and informed member of the convention. He kept a detailed record of the proceedings, which remains the major source of information on the convention. After the delegates approved the Constitution and adjourned, the struggle for ratification began. Each state except Rhode Island held a convention, where representatives studied and debated the Constitution before ratifying it.[1]

In June of 1788, ratification by one more state was needed for adoption of the Constitution. Since New York had not

---

[1]Edward S. Corwin and Jack W. Peltason, Understanding the Constitution (New York: Holt, Rinehart and Winston, 1967), pp. 14-18.

ratified, and its location, size and population deemed it essential to the success of the new government, an intense campaign began in that state. Alexander Hamilton, recently a New York delegate to the Philadelphia convention, urged John Jay, also of New York, and James Madison to write a series of articles or essays to convince the people of the Empire State to support ratification. The Federalist Papers, as the eighty-five essays are known, are the most important contemporary commentaries on the Constitution.[2] Each of the previously-mentioned sources makes reference to impeachment and is thus valuable in analysis of impeachment issues. The framers debated such questions as: "What are impeachable offenses?"; "Who is impeachable?"; "Who should impeach and who should judge impeachments?"; and "What tenure should judges have?"

Between 1776 and 1787, almost all state constitutions had provided for impeachment of public officials. The grounds for impeachment varied from state to state, some authorizing it when the safety of the state was endangered by "mal-administration, corruption or other means." Other offenses in various states included "misconduct and maladministration" in office; "mal and corrupt conduct" in office; "misbehavior;" "maladministration;" and "misdemeanor or default." In most of the states, the lower legislative chamber initiated impeachment proceedings, although the trial and judgment of impeachments again varied among states. In some, the proceedings were in the upper

---

[2]Ibid., p. 19.

legislative house, in others they were held by the judiciary, and still others provided for a combination of the two. Some states specified the punishment to be removal and disqualification with a provision that the officers were subject to indictment and other penalties imposed by law. Some states additionally provided that no pardons could be granted by the chief executive in cases of impeachment.[3]

At the constitutional convention, a discussion of the executive department prompted the first reference to impeachment, which centered around the president. It is interesting to note the numerous terms mentioned for impeachable offenses and the various methods of carrying out impeachment before adoption of the final (and present) wording and provisions. Madison noted in the first draft of the Constitution emanating from the committee of detail (a five man body to whom the convention referred the preliminary proceedings on 23 July for the purpose of reporting a written Constitution conformable to the convention discussions) on 6 August 1787 that the president "shall be removed from his office on impeachment by the House of Representatives, and conviction, in the Supreme Court, of treason, bribery, or corruption."[4] During the convention, Edmund Randolph of Virginia and William Paterson of New Jersey

---

[3]John D. Feerick, "Impeaching Judges: A Study of the Constitutional Provisions," Fordham Law Review 39(1970):12-15.

[4]James Madison, The Papers of James Madison, ed. Henry D. Gilpin, 3 vols. (Mobile: Allston Mygatt, 1842), 2:1237.

both presented constitutional proposals which Hamilton opposed. He presented his own idea which included the following amendment:

> The Governor, Senators, and all officers of the United States, to be liable to impeachment for mal-, and corrupt conduct; and upon conviction to be removed from office, and disqualified for holding any place of trust or profit; all impeachments to be tried by a Court to consist of the Chief----, or Judge of the Supreme Court of Law of each State, provided such Judge shall hold his place during good behavior and have a permanent salary.[5]

During discussion of a motion concerning a seven year presidential term of office, Gunning Bedford of Delaware spoke in opposition, fearing the nation's situation if the people discovered that the president were unqualified, and they were saddled with him for such a long period of time. "An impeachment, he said, would be no cure for this evil, as an impeachment would reach misfeasance only, not incapacity."[6]

Early in the convention, a motion was made that the president was to be removable on impeachment and conviction for "mal practice or neglect of duty." On 20 July 1787, a debate ensued as to whether or not the president should be subject to impeachment while in office. Some delegates agreed that it was necessary to insure his good behavior. Gouveneur Morris of New York opposed impeachment because it would make the president too dependent on those who are empowered to

---

[5]Ibid., pp. 890, 892.

[6]Ibid., p. 767.

impeach. George Mason of Virginia replied that impeachment was necessary as no man should be above justice.[7]

Benjamin Franklin of Pennsylvania supported the impeachment clause by suggesting a situation whereby an obnoxious president might be assassinated if there were no alternative to removing him. Then he would have no chance to prove his guilt or innocence. Franklin believed that the executive should be punished when his "misconduct" warranted it and acquitted when he should be unjustly accused. Morris replied that "corruption" and a few other offenses should be impeachable but they ought to be enumerated and defined. Madison thought that impeachment or some provision was necessary to defend the people against "incapacity, negligence or perfidy of the Executive," and he declared that limiting his term of office was insufficient security.[8]

Charles Pinckney of South Carolina asserted that impeachment power as vested in the legislature would destroy the independence of the executive. Elbridge Gerry of Massachusetts said that impeachments were necessary because a good president would not fear them, and a bad one ought to live in fear of them. Rufus King, then also from Massachusetts (he later moved to New York), feared that impeachment of the executive

---

[7]James Madison, Notes of Debates in the Federal Convention of 1787 (1840; reprint ed., Athens, Ohio: Ohio University Press, 1966), pp. 331-32.

[8]Ibid., pp. 332-33.

would render it dependent on the other branches of government. It was justified for judges since they hold office during good behavior and not for a limited term, therefore some type of forum was necessary for trying "misbehavior." However, if the president were subjected to an impeachment trial during his term, he would be unequal to the judiciary. The executive would be tried for his behavior by his electors.[9]

Edmund Randolph supported impeachment because the executive would have great opportunity to abuse his powers. He suggested limiting the influence of the legislature by using a forum of state judges to hear impeachments, and in addition, having a preliminary inquest to determine the existence of just grounds for impeachment. Pennsylvania's James Wilson proposed that since senators would serve a six year term similar to the executive, they should also be subject to impeachment. Pinckney, still opposing impeachment, said that it was unnecessary if executive powers were enumerated and circumscribed. Morris, changing his opinion, then suggested that the executive be impeachable for "treason, corrupting his electors and incapacity." For the latter, the president should be punished only as an officer and only by removal.[10]

Following this discussion, the convention voted on the question "Shall the Executive be removable on impeachments?" and the majority voted in the affirmative. On 26 July 1787,

---

[9]Ibid., p. 333.

[10]Ibid., pp. 334-35.

the convention referred to the committee of detail a resolution that the president was "to be removable on impeachment, and conviction of malpractice or neglect of duty." The committee's report on 6 August showed the wording of the offenses to be changed to "treason, bribery, or corruption."[11]

On 4 September the committee of eleven (a group composed of one member from each state to which the convention on 31 August referred the previously postponed constitutional provisions and reports that were unacted upon) reported that presidential impeachment was only for "treason and bribery." On 8 September Mason pointed out that treason would not reach many "great and dangerous offenses" and suggested adding "maladministration." Madison noted that "so vague a term will be equivalent to a tenure during pleasure of the Senate." Mason withdrew the term and substituted "other high crimes and misdemeanors against the State." The final adoption following this discussion read as follows: "The President, the Vice President, and other Civil officers of the United States shall be removed from office on impeachment and conviction by the Senate of treason, bribery or high crimes and misdemeanors against the United States." The committee of style and arrangement on 12 September reported the clause in its final form, making only two changes. They used "all civil officers" rather than "other civil officers," and they deleted "against the United States" at the end. Although the first two

---

[11]Ibid., pp. 335, 383; Madison, Papers, 2:1237.

committees limited their definition of impeachment to criminal conduct, it is significant that the whole convention opted for the broad definition covering both criminal and noncriminal conduct.[12]

It is evident from the convention debates that there were numerous "crimes" for which the delegates intended the executive to be impeached and punished, yet they limited it in the Constitution to treason, bribery or other high crimes and misdemeanors. The reason for this action was their fear of making one or more of the three branches of government dependent on another. They were more apprehensive, however, of an unqualified or unfit president who might abuse his power and endanger the nation, so they expressly inserted the impeachment provision with the general offenses of treason, bribery or other high crimes and misdemeanors. With so many fears of it expressed, it is uncertain why the convention rejected "maladministration" in favor of the term substituted. The reason is that "high crimes and misdemeanors" was a term of art taken bodily from English parliamentary usage, unlike "maladministration," which was open to broad and dangerous interpretations.[13]

Because the discussion of the impeachment provisions centered around the president, there is some confusion as to

---

[12]Madison, Notes of Debates, pp. 575, 605-06, 625; Paul S. Fenton, "The Scope of the Impeachment Power," Northwestern Law Review 65(1970):731.

[13]Feerick, "Impeaching Judges," p. 50.

whom is included in the term "civil officers," which was added to the impeachment clause without argument on 8 September. Paterson's proposition of 15 June contained a provision which mentioned the "impeachment of federal officers." The constitutional draft reported by the committee of detail on 6 August referred to "the trial of impeachments of officers of the United States."[14] On 20 August, in a proposition concerning the creation of officers to assist the president in conducting public affairs, Madison noted an accompanying provision that these officers shall be liable to impeachment and removal from office for "neglect of duty, malversation or corruption." The committee of detail submitted this proposition before the convention had decided upon the final wording on 8 September. Thus, all these references to the term show that "civil officers" was not attached as an afterthought.[15]

During the impeachment debates, James Wilson stated that senators as well as the executive should be impeachable. Other delegates evidently understood that senators were not impeachable, as evidenced by Rufus King's argument that the president should not be subjected to impeachment during his term of office. "The Executive was to hold his place for a limited term like the members of the Legislature. Like them, . . . he would periodically be tried for his behavior

---

[14]Madison, Notes of Debates, pp. 120, 393.

[15]Madison, Papers, 3:1369.

by the electors . . . . Like them therefore, he ought to be subject to no intermediate trial, by impeachment."[16]

The belief that senators were not included in the term "civil officers" is also supported by the distinction between members of Congress and civil officers in the constitutional provision: "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 . . ." (Article 1, Section 6).[17] In 1799, the first impeachment under the Constitution settled the question. Senator William Blount of Tennessee was impeached by the House and expelled by the Senate the next day. When the Senate proceedings began, Blount contended that he was not a civil officer.[18]

The reasoning behind this decision, which also applies to House members, was that the term "civil officers of the United States" meant those who derived their appointment under the national government and not by appointment from the states or people of the states. It was necessary, therefore, to enumerate the president and vice-president in the impeachment clause since they derive their offices from a source higher

---

[16]James Madison, The Writings of James Madison, ed. Gaillard Hunt, 9 vols. (New York: G. P. Putnam's Sons, 1900-10), 4:16-17.

[17]Charles K. Burdick, The Law of the American Constitution: Its Origins and Development (New York: G. P. Putnam's Sons, 1922), p. 86.

[18]Robert A. Diamond, ed., Impeachment and the U.S. Congress (Washington, D.C.: Congressional Quarterly, 1974), p. 8.

than the national government. "Civil officers" subject to impeachment, then, refers to all executive or judicial officers who hold appointments under any department of the national government, with the exception of army and naval officers, who are judged by the military in court-martial proceedings.[19]

Another subject of constitutional debate relevant to impeachment was that of judicial tenure. Before American independence, appointment of colonial judges was made for the "pleasure of the Crown," and one of the grievances against George III in the Declaration of Independence was the insecure position of the judiciary. Between 1776 and 1787, most state constitutions provided that judges would hold offices during good behavior and were subject to impeachment. In addition, six states provided for the English dual system of removal by address and impeachment.[20]

Madison noted in early discussions of the proposed federal Constitution that "the Judges of the Supreme Court shall be triable by the House of Representatives."[21] This was before the final wording in Article 2 and the addition of "civil officers." On 6 August the convention proposed the judiciary article, which provided that "The Judges of the Supreme Court,

---

[19]Joseph Story, Commentaries on the Constitution of the United States, 3 vols. (1833; reprint ed., New York: Da Capo Press, 1970), 2:258-60.

[20]Feerick, "Impeaching Judges," pp. 12-15.

[21]Madison, Papers, 3:1399.

and of the Inferior Courts, shall hold their offices during good behavior."[22] Article 3, Section 1 of the Constitution does not specifically say that judges are appointed for life, but under the English practice at the time of adoption of the Constitution, "good behavior" referred, not to grounds for removal, but to the concept of lifetime tenure.[23]

On 27 August 1787 an amendment to the good behavior clause was offered in the convention by John Dickinson of Delaware. It proposed that federal judges be removable by the executive on the application of both houses of Congress. This was patterned after the English system of removal by address, which was used in some states. In the discussion following the amendment's introduction, Randolph of Virginia opposed it because it weakened the independence of judges. Wilson believed that judges would be in a predicament if made dependable on "every gust of faction" which might prevail in both branches.[24] The convention decisively rejected the amendment and refused to consider an elective judiciary. In their desire to create an independent judiciary, the framers left the judges free from popular pressure and legislative control and limited them only

---

[22]Max Farrand, ed., The Records of the Federal Convention of 1787, rev. ed., 4 vols. (New Haven: Yale University Press, 1937), 2:186.

[23]Fenton, "Impeachment Power," p. 723.

[24]Farrand, Records, 2:428-29.

by impeachment.[25] Although the judiciary article of the Constitution states no specific provision of removal or impeachment, it is presumed that judges were included in Article 2 under the term "all civil officers" on the basis of state constitutional practice, discussions in the constitutional convention, and rejection by the convention of the English system of removal on direct address of both houses.[26]

After adoption of the Constitution by the Philadelphia convention, Alexander Hamilton gave further insight into the understanding of the judiciary article through constitutional commentaries in The Federalist. He noted in The Federalist Number 78 that conforming to the practice of most state constitutions, federal judges would hold their offices during good behavior, and judicial independence was thus maintained through permanent tenure. Furthermore, impeachment provided assurance of the judges' responsibility. In The Federalist Number 79 he said,

> They are liable to be impeached for malconduct by the house of representatives, and tried by the senate, and if convicted, may be dismissed from office and disqualified for holding any other. This is the only provision on the point, which is consistent with the necessary independence of the judicial character, and is the only

---

[25]Martha Ziskind, "Judicial Tenure in the American Constitution: English and American Precedents," The Supreme Court Review, ed. Philip B. Kurland, 12 vols. (Chicago: University of Chicago Press, 1960-72), 10(1969):152-53.

[26]Ibid., p. 151.

> one which we find in our own constitution in respect to our own judges.[27]

Since Hamilton, when in attendance, was a participant in the constitutional convention, this statement shows that undoubtedly judges were included in the term "civil officers." Hamilton also revealed in the same essay that there were complaints about the absence of a provision for removing judges for inability. He believed that such a provision would be abused more than it would prove to be useful. Trying to determine a boundary between ability and inability would give rise to "personal and party attachments and enmities" more than it would advance "the interests of justice, or the public good." Except for cases of insanity, the result would be arbitrary. ". . . [I]nsanity without any formal or express provision, may be safely pronounced to be a virtual disqualification." This was the only other excuse Hamilton would accept for removal of a judge, but he did not specifically state how it was to be carried out.[28]

In The Federalist Number 81, Hamilton offered assurances that there was no need to fear judicial encroachment on legislative authority. He noted that the great constitutional check of impeachment instituted in one legislative house and judgment given in the other gives Congress power over the

---

[27]Alexander Hamilton, John Jay, and James Madison, The Federalist, ed. Jacob E. Cooke (Middletown, Conn.: Wesleyan University Press, 1961), pp. 522, 532-33.

[28]Ziskind, "Judicial Tenure," 10:152; Hamilton, Federalist, pp. 532-33.

judicial department. He predicted that judges would never unite against the legislature as long as it possessed the means of removing them.[29]

Hamilton expressed additional views on impeachment in other writings in The Federalist, which are helpful in interpreting the impeachment provisions. In The Federalist Number 65, he expressed apprehension about the use of impeachment as a political weapon, but he believed the system whereby the House impeaches and the Senate judges would prevent this possibility. Hamilton noted that this was based on the English model where the Commons prefers impeachment and the Lords decide upon it. In commenting on the Senate as a court of impeachment, Hamilton issued a warning.

> The subjects of its jurisdiction . . . are of a nature which may with peculiar propriety be denominated POLITICAL . . . . The prosecution of them will seldom fail to agitate the passions of the whole community, and to divide it into parties . . . . In many cases, it will connect itself with the preexisting factions, . . . and in such cases there will always be the greatest danger, that the decision will be regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt.[30]

Other sources of information which aid the historian in an analysis of the impeachment provisions are the debates in the state conventions elected to ratify or reject the Constitution. The convention delegates occasionally discussed

---

[29]Hamilton, Federalist, p. 545.

[30]Ibid., pp. 439-40.

impeachment, and some of their statements give clues which are helpful in understanding the framers intentions. In Virginia, Edmund Randolph, who also had attended the Philadelphia convention, said that "In England, those subjects which produce impeachments are not opinions. No man ever thought of impeaching a man for an opinion. It would be impossible to discover whether the error in opinion resulted from a wilful mistake of the heart, or an involuntary fault of the head."[31]

Governor Samuel Johnston of North Carolina stated that "Impeachment only extends to high crimes and misdemeanors in a public office. It is a mode of trial pointed out for great misdemeanors against the public."[32] In the same state convention, William McLaine noted that while members of Congress were not impeachable, they are "amenable to the law for crimes and misdemeanors committed as individuals."[33] James Iredell, also of North Carolina, remarked that

> The power of impeachment is given by this constitution to bring great offenders . . . to punishment for crimes which it is not easy to describe, but which everyone must be convinced is a high crime and misdemeanor against the government . . . . [T]he occasion for its exercise will arise from acts of great injury to the community, and

---

[31]Jonathan Elliot, The Debates in the Several State Conventions on the Adoption of the Federal Constitution, 5 vols. (1888; reprint ed., New York: Burt Franklin, 1968?), 3:401.

[32]Ibid., 4:48.

[33]Ibid., p. 34.

> the objects of it may be such as cannot be easily reached by an ordinary tribunal.[34]

From the debates at both the Philadelphia convention and in some of the state ratifying conventions, it is evident that the major concern of the framers was "not acts that could be committed by any citizen, but rather acts associated with the exercise of a public trust that could endanger the nation."[35]

The final source of insight into understanding the constitutional provisions on impeachment comes from the House debates in the first Congress which met from 1789 to 1791. Since several members of Congress had been participants in the Philadelphia convention, these debates are significant in analyzing the intent of the framers. A motion was under discussion concerning establishment of a department of foreign affairs (state department) with a provision that the secretary be removable by the president. A debate ensued regarding the advisibility of empowering the president to remove public officials. This raised the question of the impeachment clause and its relation to removal of officers by the president. Elias Boudinot of New Jersey stated that the framers intended impeachment as a punishment for crimes and not "as the ordinary means of re-arranging the departments." He also pointed out that the framers would not have singled out and explicitly declared that judges held their offices during good behavior

---

[34]Ibid., p. 113.

[35]Feerick, "Impeaching Judges," p. 50.

if this was the tenure meant for all officers. To Boudinot, this made it clear that the Constitution intended judges to hold their offices during good behavior and all other officers during the pleasure of the president, thereby allowing him to remove an officer who was found unfit or incapable of doing his duty.[36]

James Madison, a representative from Virginia, made the observation that if the president removed a capable officer without sufficient cause, he would be guilty of abusing his power. This would be prevented by his impeachment "for such an act of maladministration," and the president would be subject to removal from his office. ". . . [I]f an unworthy man be continued in office by an unworthy President, the House of Representatives can at any time impeach him, and the Senate remove him, whether the President chooses or not."[37] Congress finally adopted the bill establishing the department of foreign affairs with provision for a secretary and other officials. The delegates did not specifically state that the president had the power to remove these officers, but instead, agreed that it was understood that the Constitution vested the removal power in the president.[38]

---

[36]U.S., Congress, House, Annals of Congress, 1st Cong., 1st sess., 19 May 1789, pp. 389-90.

[37]Ibid., 17 June 1789, p. 517.

[38]Ibid., 22 June 1789, p. 608.

In 1797, when the first impeachment occurred under the Constitution, Congress was not without a background of precedents, discussions and debates on the subject. The English theory and use of impeachment, colonial impeachment practice, constitutional debates, The Federalist Papers, debates in the state ratifying conventions and in the first Congress provided a wealth of information on impeachment. The impeachment of William Blount, charged with attempting to keep an Indian agent from performing his duty, did not, however, stir much controversy or provide much challenge for Congress. The senator allegedly had planned to launch an attack by Indians and frontiersmen, aided by a British fleet, against Spanish-controlled Louisiana and Florida to achieve their transfer to British control. The only real issue was whether or not the Senate had jurisdiction to judge Blount's case, and since that body had already expelled him, this removed the object of the impeachment proceedings.[39] When the Senate dismissed the case, it determined that "all civil officers" did not include members of Congress, and since that time, the interpretation of those words has not been challenged. The next two impeachment cases proved to be more difficult. Senators were confronted with the task of interpreting constitutional provisions on impeachment and establishing precedents concerning

---

[39]Diamond, Impeachment, p. 8; William H. Masterson, William Blount (Baton Rouge: Louisiana State University Press, 1954), pp. 292-322, 341-42.

impeachable offenses. Amid much controversy and heated partisan debate, they ultimately met the challenge and proved equal to the task.

CHAPTER III

THE PICKERING TRIAL

When Federalist Chief Justice John Marshall administered the presidential oath of office to Republican Thomas Jefferson for his second term, he felt secure in his position for the first time since his appointment to the Supreme Court. Only three days before, on 1 March 1805, the United States Senate, sitting as a court of impeachment, had acquitted Justice Samuel Chase and brought a great crisis in American judicial history to an end. The associate justice was a man of violent Federalist principles and the most sarcastic, intemperate and overbearing judge in all of the federal courts.[1] He had been impeached by the House in a strictly partisan vote in what appeared to the Federalists, coupled with Judge John Pickering's earlier impeachment and removal, to be an attack on the entire federal judiciary. The significance of the trial is that it established the independence of the judiciary and set an important precedent concerning the constitutional interpretation of impeachment. From that time, with the exception of the trial of President Andrew Johnson, impeachment was to be used only in cases of criminal acts or serious

---

[1]Nathan Schachner, Thomas Jefferson, 2 vols. (New York: Appleton-Century-Crofts, 1951), 2:777.

neglect of duty by public officials and not as a political weapon of the majority party to remove undesirable officers.

The national judiciary during Jefferson's first term was almost entirely Federalist in composition, especially since the midnight appointments made by President John Adams in March 1801, just before he left office. Among these life-time appointments was that of Chief Justice John Marshall, who came to the bench in January 1801, after the sudden resignation of Chief Justice Oliver Ellsworth. This Federalist domination was both humiliating and irritating to the Republicans, who now controlled the other two branches of the federal government.[2] Thomas Jefferson, who had succeeded Adams as chief executive, believed that the Federalists had taken control of the judiciary. "On their part, they have retired into the judiciary as a stronghold. There the remains of federalism are to be preserved and fed from the treasury, and from that battery all the works of republicanism are to be beaten down and erased."[3] There is no record of any plot against the judiciary personally instigated by Jefferson himself, but he was the official leader of his party and,

---

[2]Noble E. Cunningham, Jr., The Jeffersonian Republicans in Power: Party Operations 1801-1809 (Chapel Hill: University of North Carolina Press, 1963), p. 79.

[3]Thomas Jefferson to John Dickinson, 19 December 1801, Thomas Jefferson, The Writings of Thomas Jefferson, eds. Andrew A. Lipscomb and Albert E. Bergh, 20 vols. (Washington, D.C.: The Thomas Jefferson Memorial Association, 1904-05), 10:302; Dumas Malone, Jefferson the President: First Term, 1801-1805 (Boston: Little, Brown and Co., 1970), p. 458.

therefore, the Federalists blamed him for the collective actions of party members in their attack on the judiciary.[4] The Republican objective was essentially to nullify the Constitution through removal of judges, in order to replace them with men subservient to the will of the Republican leadership.[5]

Since the federal judiciary was a creation of Congress, the Jeffersonians might have corrected the irresponsibility of judges by several means, but they chose the least effective and most offensive weapon, that of impeachment. They embarked upon this course without realizing its inherent problems. To remove judges through impeachment and conviction, Republicans took the position that judges were removable for misbehavior, whether such behavior was criminal or not. Thus, they transformed the impeachment process from a criminal proceeding into a method of removal. This constitutional interpretation was not easily accepted by many members of Congress.[6]

The judicial attack began early in 1802, when Congress repealed the Federalist-sponsored judiciary act of 1801.[7] This act had constituted a much-needed reform because it

---

[4]Merrill D. Peterson, Thomas Jefferson and the New Nation: A Biography (New York: Oxford University Press, 1970), p. 796.

[5]Robert E. Ireton, "Jefferson and the Supreme Court," Boston University Law Review 17(1937):86.

[6]Peterson, Jefferson: Biography, p. 795.

[7]Act of 13 February 1801, U.S., Statutes at Large 2:89; Act of 3 March 1801, ibid., p. 123; The first act reorganized the courts and the second act set the times and places of holding the circuit courts.

allowed Supreme Court justices to confine their duties exclusively to the supreme bench, by creating several circuit court judgeships, so that the justices did not have to serve those courts as well. The Republicans passed a law repealing the act and enacted another law amending the judicial system.[8] The reason for Republican repeal of the law was that the act had been passed while John Adams was president, and he was able to appoint Federalists to all of the newly-created judgeships.[9] Thus, repeal abolished the new positions, restored the number of Supreme Court justices to six, limited the Court to one annual term, and, in addition, suspended the Supreme Court session for over a year so that it did not meet again until February 1803.[10] Another law returned the Supreme Court justices to circuit riding and service with the district judge where the court sat.[11]

The next action taken against the federal judiciary was on the state level, with the impeachment and conviction of a

---

[8]Act of 8 March 1802, U.S., Statutes at Large 2:132; Act of 29 April 1802, ibid., p. 156.

[9]Albert J. Beveridge, Life of John Marshall, 4 vols. (Boston and New York: Houghton Mifflin Co., 1916-19), 3:56-57.

[10]Ibid., pp. 94-95; The Federalist-sponsored act provided that upon vacancy of any of the six positions on the Supreme Court, no new justices would be appointed, thus reducing the number to five. The purpose was to retain the Federalists on the Court and deny the Republican president the opportunity to appoint a Republican to the Supreme Court. By restoring the number to six, the Republicans could secure an appointment from their party upon the next vacancy.

[11]Act of 3 March 1803, U.S., Statutes at Large 2:244.

Pennsylvania state judge, Alexander Addison. He was accused of partisan expression from the bench, and the Pennsylvania senate found this behavior illegal and unconstitutional and removed him.[12] At this same time, Marshall handed down the Court's decision in Marbury v. Madison.[13] The Court's action in voiding section thirteen of the judiciary act of 1789 and establishing the precedent of judicial review angered the Republicans and encouraged them further to curb Federalist power in the judiciary.[14] Republican Senator William Branch Giles of Virginia, in expressing his theory of impeachment, said of this action that

> if the Judges of the Supreme Court should dare, as they had done, to declare an act of Congress unconstitutional, or to send a mandamus to the Secretary of State, as they had done, it was the undoubted right of the House of Representatives to impeach them and the Senate to remove them for giving such opinions, however honest or sincere they may have been in entertaining them.[15]

---

[12]Malone, Jefferson: First Term, p. 459.

[13]5 U.S. 137 (1803); William Marbury sued for a writ of mandamus compelling Secretary of State James Madison to deliver the commission of his judicial appointment signed by President Adams. The Court decided that Marbury was entitled to his commission, but they could not issue a mandamus to Madison because it was an exercise of original jurisdiction not warranted by the Constitution, one which Congress had no power to give the Court. It further stated that an act of Congress repugnant to the Constitution cannot become law.

[14]Cunningham, Jeffersonian Republicans, p. 79.

[15]John Quincy Adams, Memoirs of John Quincy Adams, ed. Charles Francis Adams, 12 vols. (1874-77; reprint ed., Freeport, New York: Books for Libraries Press, 1969), 1:322.

Before he became president, Thomas Jefferson had favored appointment of judges to hold offices during good behavior as evidenced by the following remark in July 1776: "The judges . . . should not be dependent upon any man or body of men. To these ends they should hold estates for life in their offices, or, in other words, their commissions should be during good behavior . . . ." After the Marbury v. Madison decision, Jefferson was convinced that judicial review, without the judges' fears of losing their positions if their actions were disapproved, was inconsistent with democratic principles. He said, "It is a misnomer to call a government republican in which a branch of the supreme power is independent of the nation."[16]

The successful impeachment trial of Federalist John J. Pickering, United States judge for the District of New Hampshire, beginning in March 1803, laid the groundwork and led directly to the impeachment of Samuel Chase. Pickering was guilty of intoxication and misconduct during a trial, and virtually everyone agreed he was unfit for office, because he was, in fact, insane. For five years after his appointment to the federal bench, Pickering performed his duties satisfactorily, perhaps because he no longer had to go on circuit. In 1801, he suffered a mental breakdown and his duties had to

---

[16]Thomas Jefferson to George Wythe, ? July 1776, Thomas Jefferson, The Works of Thomas Jefferson, ed. Paul Leicester Ford, 12 vols. (New York: G. P. Putnam's Sons, 1904-05), 2:218; Evan Haynes, The Selection and Tenure of Judges (____, 1944), p. 93.

be taken over by a member of the federal circuit court. For some time, Pickering had been increasingly hypocondriac and his many peculiarities, such as his fear of crossing rivers and his tendancy to seek seclusion, revealed an abnormal mentality. When the circuit courts were abolished near the beginning of Jefferson's administration, Pickering had to resume his duty and the situation became intolerable.[17] Federalists, although familiar with every aspect of the Pickering case and aware of his condition, were unwilling to arrange a quiet resignation for the sake of a dignified judiciary. Jefferson, as in the case of the Louisiana Purchase, condoned an almost certain violation of the Constitution rather than risk the uncertainity of an amendment.[18]

For the first time, Jefferson involved himself directly in the judicial attack and led the way by instructing the House to bring articles of impeachment against Pickering. In his message to the House on 4 February 1803, the President stated,

> The enclosed letter and affidavit exhibiting matters of complaint against John Pickering, district judge of New Hampshire, which is not within executive cognizance, I transmit them to the House of Representatives, to whom the Constitution has confided a power of instituting proceedings

---

[17]Lynn W. Turner, "The Impeachment of John Pickering," American Historical Review 54(1949):488; Dictionary of American Biography, s.v. "Pickering, John."

[18]Turner, "Pickering," p. 492.

> of redress if they shall be of opinion that the case calls for them.[19]

Jefferson passed the problem to Congress and, thus, supported impeachment. He had earlier recommended a constitutional amendment allowing the president, on the application of Congress, to remove judges from office. But, the amendment process was slow, and the Federalists would probably have defeated it, since it would have provided a perfect method for removing Pickering.[20]

The House drew up four impeachment articles against the judge, all of which the Federalists fought.[21] Because of Pickering's insanity, they believed he was not subject to trial under legal procedures.[22] The Senate faced a dilemma because Pickering would not resign, and the Constitution did not provide for impeachment on the grounds of incapacity.[23] The problem concerned the method of removing a federal judge for disabilities which do not warrant impeachment but which render him unfit to perform his duties. Pickering's predicament presented the problem in a simple form, but the Republican-dominated Congress in 1803 failed to find the simple solution,

---

[19]U.S., Congress, House, Annals of Congress, 7th Cong., 2nd sess., 4 February 1803, p. 460.

[20]Malone, Jefferson: First Term, p. 462.

[21]See Appendix III, "Impeachment Articles against Judge John Pickering."

[22]Schachner, Jefferson, 2:776-77.

[23]Irving Brant, Impeachment: Trials and Errors (New York: Alfred A. Knopf, 1973), p. 49.

nor has the Constitution since yielded a satisfactory answer. In order to get rid of Pickering, who was neither treasonable, corrupt nor criminal, the strict constructionist Republicans had either openly to violate the Constitution or to give the term "misdemeanor" a connotation much broader than its ancient common law meaning.[24] Since "treason, bribery and other high crimes and misdemeanors" are the only grounds for impeachment, the Republicans had to expand the grounds of removal beyond high crimes and misdemeanors. The Constitution also provides that judges shall hold their offices during "good behavior," which the Federalists construed to mean for life; but the Jeffersonians said that since Congress had the power to impeach, then they also had the right to determine what constituted "good behavior."[25] The Republicans enabled their loose constructionist opponents to pose as defenders of the Constitution, and, thus, the Pickering case became a political rather than a legal issue. Instead of establishing the correct precedent for all future cases of judicial impeachment in American history, the case proved to be a tragic blunder, discrediting everyone connected with it.[26]

Jefferson had complained about the difficulty of removing a disabled judge and rightfully so, but he did not foresee that to use impeachment and make the process easy would throw

---

[24]Turner, "Pickering," p. 487.

[25]Schachner, Jefferson, 2:774.

[26]Turner, "Pickering," p. 487.

the judicial system completely into the hands of politicians.[27] If Pickering had been acquitted, it would have been fatal to the impeachment attempts of other Federalist judges and would also have admitted the inability of the people to protect themselves from misbehaving judges. Pickering's conviction, however, would violate the principles of law protecting the insane from trials.[28] The senators resolved their dilemma through the wording of the judgment. As each article of impeachment was read, the Senators merely answered "yea" or "nay" as to whether Pickering was "guilty as charged."[29] Senator Alexander White of Virginia opposed the form of wording, because to remove a judge without a judgment that the acts constituted high crimes and misdemeanors would destroy the "good behavior" provision and place judges at the mercy of Congress.

> Upon such a principle, and by such a mode of proceeding, good behavior . . . would be no longer the tenure of office; every officer of the Government must be at the mercy of a majority of Congress, and it will not hereafter be necessary that a man should be guilty of high crimes and misdemeanors in order to render him liable to removal from office by impeachment; but a conviction upon facts stated in articles exhibited against him will be sufficient.[30]

---

[27]Leonard Baker, John Marshall: A Life in Law (New York: Macmillan Publishing Co., 1974), p. 419.

[28]Henry Adams, History of the United States During the Administrations of Thomas Jefferson and James Madison, 9 vols. (New York: Charles Scribner's Sons, 1909), 2:156.

[29]Malone, Jefferson: First Term, p. 463.

[30]Senate, Annals, 8th Cong., 1st sess., 12 March 1804, p. 365.

Jonathan Dayton of New Jersey stated that the Constitution gave no power to the Senate to remove and disqualify an officer except for high crimes and misdemeanors. Most senators believed Pickering to be guilty of the specific charges but could not declare him guilty in the words of the Constitution. It is obvious that the majority intended to reject both modes of questioning--whether guilty of the facts charged in each article, followed by whether those facts amounted to high crimes and misdemeanors. Thus, the Senate established a precedent for removing a judge in a manner unauthorized by the Constitution.[31] The wording of the judgment relieved the consciences of those senators who doubted that the judge's offenses fell within the language of the Constitution.[32]

Pickering was pronounced guilty as charged on all four articles by a strictly partisan vote--nineteen Republicans answering "yea," while the seven Federalists voted "nay." On the question of whether the judge should be removed from office, the results were twenty "yeas" and six "nays." Two Republican senators, Samuel Smith of Maryland and John Smith of New York had voted on impeachment in the House in the last session. Rather than disqualifying themselves in the Senate trial, they voted that Pickering was guilty, thus, sitting as accusers and judges.[33] Five senators protested the irregular circumstances

---

[31]Ibid. pp. 365-66.

[32]Malone, Jefferson: First Term, p. 463.

[33]Senate, Annals, 8th Cong., 1st sess., 12 March 1804, pp. 367-68.

and retired from the chamber before the vote was taken. Two of them absented themselves, not because they believed Pickering to be guilty of high crimes and misdemeanors, but because they did not choose to be compelled to give so solemn a vote upon a form of question which they considered "unfair."[34]

The Pickering case showed that the impeachment process was essentially a method of removal rather than a charge and conviction of high crimes and misdemeanors, which was exactly the interpretation the Republicans wished to give it.[35] The results were extremely disturbing to the Federalists, because Pickering's successful impeachment effected the subordination of the judiciary to Republican control through the impeachment process.[36] Timothy Pickering [no relation to John], Federalist senator from Massachusetts, wrote to Theodore Lyman after the trial, saying, "The Demon of party governed the decision. All who condemned were Jeffersonians--and all who pronounced the accused not guilty were federalists. Some members retired without giving any vote."[37]

William Plumer, Federalist senator from New Hampshire, expressed similar views, realizing that the Pickering conviction could set a precedent for the future removal of Chase. "If the

---

[34]Ibid., p. 366.

[35]Malone, Jefferson: First Term, p. 463.

[36]Cunningham, Jeffersonian Republicans, p. 80.

[37]Pickering to Lyman, 14 March 1804, Timothy Pickering Papers, Massachusetts Historical Society, Boston, on microfilm, North Texas State University.

impeachment process could be used to effect the removal of a man mentally incapable of criminal intent, it could easily be made effective against a judge who wittingly used the bench as a soap box for political speeches."[38] John Quincy Adams, Federalist senator from Massachusetts, agreed in a letter to his father. "It was impossible to establish by a stronger case than that, the principle that criminality was not an essential ingredient of impeachable offense." He said that the Pickering conviction was "intended to pave the way for another prosecution, which would have swept the supreme judicial bench clean at a stroke."[39] Adams also expressed concern for the effect of the trial on the future of the nation.

> On the impeachment of Mr. Pickering there are 2 remarks which have impressed themselves on my mind with peculiar force--the subserviency of the Senate, even when acting as a Judicial Court, to a few leading members of the House of Representatives, and the principle assumed, though not yet openly avowed, that by the tenure of good behavior is meant an active, continual, and unerring execution of office. So that insanity, sickness, any trivial error of conduct in a Judge, must be construed into misdemeanors, punishable by impeachment. The fact of the first remark, coupled with the principle assumed by the last, I think must produce important consequences to this Union.[40]

---

[38]Lynn W. Turner, William Plumer of New Hampshire, 1759-1850 (Chapel Hill: University of North Carolina Press, 1962), p. 155.

[39]John Quincy Adams to John Adams, 8 March 1805, John Quincy Adams, Writings of John Quincy Adams, ed. Worthington C. Ford, 7 vols. (New York: The Macmillan Co., 1914), 3:108.

[40]Adams, Memoirs, 1:309-10.

The Pickering trial was a partisan affair, but not merely because of the Republican impeachment interpretation. The Federalists opposed Pickering's resignation for purely political reasons, and "while championing the independence of the judiciary, they were in fact defending a Federalist judiciary."[41] By confusing insanity with criminal misbehavior, the Republicans erased the line between good administration and politics and made any word or deed which a political majority might think objectionable to be the excuse for impeachment and removal from office.[42] The Republicans, in convicting Pickering, humiliated an unfortunate human being, but the Federalists were equally at fault for trying to keep a man of demonstrated incompetence in office.[43] The Pickering family would have been spared much humiliation had the judge resigned, but that would have been a rational act, of which he was incapable. The family did nothing because of the judge's poverty, Pickering being notoriously generous and improvident. He had lost many possessions in a Portsmouth, New Hampshire fire of 1802, and, as this was in the days before civil service pensions, Pickering would have been destitute had he resigned. By failing to arrange for his resignation, Pickering's friends also failed to save him from prosecution, and besides, the Federalists did not

---

[41]Malone, Jefferson: First Term, pp. 463-64.

[42]Turner, "Pickering," p. 493.

[43]Malone, Jefferson: First Term, p. 464.

want his vacancy to be filled by a Republican. They were guilty of seeking to keep a man in office for the sake of "good policy."[44]

Thomas Jefferson added to the partisan accusations after the trial by the appointment of two witnesses for the prosecution. He appointed John Samuel Sherburne, the district attorney, to take Pickering's place, and the court clerk, Jonathan Steele, to become district attorney.[45] Jefferson and the Republicans missed an opportunity to remedy a serious defect in the Constitution. In at least seven states, judges afflicted by insanity or other equally serious disabilities could be removed from office by "address" of both legislative houses to the governor. This method of removal, borrowed from the English, had been suggested in the federal constitutional convention, but it had been decisively rejected as making the judiciary dangerously dependent upon the whims of Congress. Although it has occasionally been abused by political majorities in the states where it is practiced, it would have provided an ideal method for the prompt and easy removal of John Pickering. William Plumer later agreed in his autobiography by saying,

> Had the constitution of the United States given authority to congress to have removed a judge by address, as that of New Hampshire does, I believe every senator would have

---

[44]Turner, "Pickering," pp. 488, 491.

[45]Malone, Jefferson: First Term, p. 464.

> voted for Pickering's removal. Tho it was wrong for him to remain in office, yet it was a violation of the principles of our government, to convict and remove him on an impeachment on account of his insanity.[46]

Alexander Hamilton in The Federalist Number 79 had stated that the "good behavior" article was "the only one which we find in our own constitution in respect to our own judges." He added that, although there was no written provision for removing insane judges, "insanity without any formal or express provision, may be safely pronounced to be a virtual disqualification."[47] Later, historian Henry Adams wrote,

> If insanity or any other misfortune was to bar impeachment, the absurdity followed that unless a judge committed some indictable offence the people were powerless to protect themselves. Even the Federalists might reasonably assume that the people had never placed themselves in such a situation, but that in making judges subject to impeachment for misbehavior they had meant to extend the scope of impeachment, and to include within it all cases of misbehavior which might require removal from office for the good of the public service.[48]

This commonsense view of Adams, along with Hamilton's assumption that insanity afforded grounds for removal, was probably shared by the constitutional framers, and it is supported by the

---

[46]Turner, "Pickering," p. 492.

[47]Alexander Hamilton, John Jay, and James Madison, The Federalist, ed. Jacob E. Cooke (Middletown, Conn.: Wesleyan University Press, 1961), pp. 532-33.

[48]Adams, History of the U.S., 2:156.

traditional rule that a document should be construed to avoid an unreasonable or absurd result.[49]

Hamilton's view must be interpreted to mean either that insanity falls within "high crimes and misdemeanors," which is inconsistent if criminality is the basis of impeachable conduct, or that the Constitution does not exclude some other method of removal "without any formal or express provision." If impeachment is the exclusive means of removal, Hamilton's statement indicates that he would have approved of using it for removal of an insane judge, because he approached the problem in practical terms. As one twentieth century constitutional historian comments, "That practical approach is still more commendable if we accept the general view that in this country impeachment is not criminal in nature, but is merely designed to remove an unfit person from office."[50] Hamilton believed that attempting to draw the line between ability and inability would give rise to personal and party attachments and enmities more than advance the interests of justice or the public good. The impeachment of Judge Pickering showed that cases of insanity can provoke factional clamor as well.[51]

In the "removal" debate in the first Congress, the representatives decided to accept another means of removal other

---

[49]Raoul Berger, Impeachment: The Constitutional Problems (Cambridge: Harvard University Press, 1973), p. 184.

[50]Ibid.

[51]Ibid., p. 185.

than impeachment. They approved the power of the president to remove executive officers, understood to be vested in him by the Constitution, and thus the impeachment clauses did not exclude this power. Supporters of this independent source of removal agreed that impeachment did not extend to disability and insanity, and this fortified their argument in behalf of the president's power even more.[52]

Pickering's removal was followed by Chase's acquittal in 1805, which reversed the precedent set by the Pickering case. This was fortunate for the nation whose government valued an independent judiciary, but Chase's trial left untouched the problem which Pickering's condemnation had revealed. The constitutional problem of reconciling an independent judiciary with a proper behavior still exists and demands attention.[53] In 1967, the United States ratified the twenty-fifth amendment to fulfill a long-recognized need for a remedy in case a president should become incapacitated, and likewise, a need exists for a provision concerning debilitated and insane judges.

Pickering's trial revealed that incapable judges could harm the nation and therefore must be removed through impeachment. The Republicans, as shown, were less concerned about the problem of removing incapacitated judges than they were in removal for the sake of political reasons. Impeachment is

---

[52]Ibid., pp. 184, 186.

[53]Turner, "Pickering," p. 506.

not the ideal way of ridding the nation of demented or incapacitated judges, but, if it is the exclusive means of removal, it should be construed to include removal of insane and incapacitated judges.[54] Impeachment had been successfully used as a political weapon, but the Pickering case, with its irregularities and confusion, was only one step and would not serve as a precedent. For that, the Republicans moved on to their next victim, Supreme Court Justice Samuel Chase of Maryland.

---

[54]Berger, Impeachment, pp. 186-87.

CHAPTER IV

THE CHASE TRIAL

On 12 March 1804, just after the Senate voted to remove Judge John Pickering, the House, by a strictly partisan ballot, voted to impeach Justice Samuel Chase.[1] The immediate cause of the impeachment stemmed from a charge delivered by Chase to a Baltimore grand jury on 2 May 1803, scarcely two months after the impeachment of Pickering and the defiant decision of John Marshall in Marbury v. Madison. Chase addressed the jury in a highly partisan discourse concerning the democratic tendencies of the local and national governments.[2] He alluded to the Jeffersonians in the phrase "our late reformers" and attacked Congress by stating, "The independence of the national judiciary is already shaken to its foundation . . . ." He further warned that Maryland's recent decision to grant universal suffrage would "destroy all protection to property, and all security to personal liberty; and our republican

---

[1]Samuel Chase, Trial of Samuel Chase, 2 vols. (1805; reprint ed., New York: Da Capo Press, 1970), 1:3-4; Edward S. Corwin, John Marshall and the Constitution: A Chronicle of the Supreme Court (New Haven, Conn.: Yale University Press, 1919), p. 73.

[2]Henry Adams, History of the United States During the Administrations of Thomas Jefferson and James Madison, 9 vols. (New York; Charles Scribner's Sons, 1909), 2:148.

constitution will sink into mobocracy, the worst of all possible governments."[3]

The Washington National Intelligencer reported that Chase's words denounced the laws of Maryland and the United States "with indiscriminate indecorum." The newspaper further warned,

> There is no mind that will not fully understand their meaning, and duly appreciate the motives in which they originated. Such . . . is the offspring of a Judge of the Supreme Court of the United States, a member of that venerable and sacred bench, constituted by you the guardian of your rights and liberties![4]

Chase had been a Revolutionary War leader, a signer of the Declaration of Independence, and his performance on the Supreme bench was the most notable of any justice previous to Marshall.[5] In contrast, his rigid enforcement of the alien and sedition laws and his partisan harangues from the bench had earned him the enmity of many Republicans. To Chase and other Federalists, he was only using his authority to guide and warn the people, not to electioneer.[6] Nevertheless, this judicial irresponsibility prompted President Thomas Jefferson to end the partisan pronouncements of the judiciary by

---

[3]Chase, Trial, 2:vi-vii.

[4]Washington National Intelligencer, 20 May 1803.

[5]Dictionary of American Biography, s.v. "Chase, Samuel."

[6]Adams, History of the U.S., 2:148.

indirectly suggesting impeachment. He wrote to Joseph H. Nicholson, representative from Maryland, and asked,

> Ought this seditious and official attack on the principles of our Constitution, and on the proceedings of a State, to go unpunished? and to whom so pointedly as yourself will the public look for the necessary measures? I ask this question for your consideration, for myself it is better that I should not interfere.[7]

A newspaper report brought Jefferson's attention to the Baltimore incident. There were numerous accounts of the episode containing both praise and condemnation of Chase, depending on the political affiliation of the editor. The Philadelphia Aurora editorialized, "This charge may be pronounced the most extraordinary that the violence of federalism has yet produced, and exhibits humiliating evidence of the unfortunate effects of disappointed ambition."[8] The Charleston Courier declared,

> Judge CHASE, a magistrate distinguished no less for his integrity and patriotism then for wisdom, penetration, sagacity and legal and constitutional knowledge, has lately delivered a charge to the Grand Jury at Baltimore . . . which . . . has excited the jealousy, the anger, and of course the open invective of the democrats who have read it.[9]

---

[7]Jefferson to Nicholson, 13 May 1803, Thomas Jefferson, The Writings of Thomas Jefferson, eds. Andrew A. Lipscomb and Albert E. Bergh, 20 vols. (Washington, D.C.: The Thomas Jefferson Memorial Association, 1904-05), 10:390.

[8]Philadelphia Aurora and General Advertiser, 24 May 1803.

[9]Charleston Courier, 7 June 1803.

Virginia Representative John Randolph of Roanoke headed a committee to determine the conduct of Chase and decide upon impeachment.[10] By March 1804, Randolph had drafted the articles and presented them.[11] At the next session of Congress, the articles were referred to a committee and on 30 November 1804, they were reported to the House substantively the same as in the last session with the addition of two new articles.[12] On 3 December 1804, the House agreed on the eight articles of impeachment and then proceeded to choose seven managers to conduct the impeachment.[13]

Speaker of the House Nathaniel Macon of North Carolina advised Nicholson not to lead the impeachment, since he might be the recipient of Chase's position and thus would be accused of removing Chase for his job. Therefore, the proceedings were turned over to John Randolph, Republican leader in the House.[14] This choice proved to be unfortunate for the Republicans, because Randolph was completely out of place as leader of the impeachment managers. As was soon indicated, he knew

---

[10]Chase, Trial, 1:2-3.

[11]U.S., Congress, House, Annals of Congress, 8th Cong., 1st sess., 26 March 1804, pp. 1237-240.

[12]Chase, Trial, 1:4-5; See Appendix IV, "Impeachment Articles Against Justice Samuel Chase."

[13]Ibid., p. 9.

[14]Gerald W. Johnson, Randolph of Roanoke: A Political Fantastic (New York: Minton, Balch and Co., 1929), p. 140.

little law in comparison to Chase's defenders.[15] He boasted that "this was his impeachment--that every article was drawn by his hand, and that he was to have the whole merit of it . . . ." With this attitude, he alienated some Republicans.[16] The other managers were Caesar Rodney of Delaware, Joseph Nicholson of Maryland, Peter Early of Georgia, John Boyle of Kentucky, Christopher Clarke of Virginia, and George W. Campbell of Tennessee.[17]

Randolph drew up eight articles of impeachment, the first six relating to Chase's judicial conduct in the trials of John Fries for treason and James T. Callender for sedition that had transpired five years earlier.[18] The last article dealt with Chase's charge to the Baltimore grand jury, which was the real cause of the impeachment proceedings and the only one which would have been sufficient to justify conviction on the same basis as the Pickering trial. Randolph made a fatal mistake by subordinating this last article to the other articles, which dealt with technical legal questions for which he

---

[15]Henry Adams, John Randolph (Boston and New York: Houghton Mifflin Co., 1882), p. 142.

[16]John Quincy Adams, Memoirs of John Quincy Adams, ed. Charles Francis Adams, 12 vols (1874-77; reprint ed., Freeport, New York: Books for Libraries Press, 1969), 1:364.

[17]William Cabell Bruce, John Randolph of Roanoke, 1773-1833, 2nd ed. rev., 2 vols. (New York: G. P. Putnam's Sons, 1922), 1:204.

[18]Richard Hildreth, The History of the United States of America, 6 vols. (1880; reprint ed., New York: Augustus M. Kelley Publishers, 1969), 5:512.

must prove criminality, a task to which he was unequal. Two of the articles did not even allege evil intent, and, therefore, Randolph was seeking to make errors on points of law by a judge an impeachable offense. No judge would be safe if he could be removed for an honest mistake of law.[19]

Chase appeared before the Senate on 2 January 1805 to answer the articles of impeachment. He replied that considerable time would be necessary to prepare his answer and submitted a motion that the court allow him until 5 March to prepare for the trial. The Senate considered Chase's motion and voted to give him half the time requested.[20] The trial actually began on 4 February 1805 when Chase presented his answer to the impeachment articles. In the weeks preceding that day, the Senate chamber was transformed into a "style of appropriate elegance." The senators were assigned to crimson covered benches on either side of the president's chair. On the right front side of the president was a box assigned to the managers, and on the opposite side was a box for Chase and his lawyers. The remainder of the Senate chamber was appropriately decorated and duly assigned, and the marshall of the District of Columbia was assigned the task of preserving order.[21]

---

[19]Bennett Champ Clark, John Quincy Adams: Old Man Eloquent (Boston: Little, Brown, and Co., 1969), 5:512.

[20]Chase, Trial, 1:13-22.

[21]Ibid., pp. 22-23.

Chase appeared at the trial with his counsel, five of the ablest lawyers in the nation: Luther Martin, Robert Goodloe Harper and Philip Barton Key, all residents of Maryland; Charles Lee of Virginia and Joseph Hopkinson of Pennsylvania.[22] The most eminent among them was Luther Martin, like Chase, an ardent Federalist, whom Jefferson had given the title "the Federal bulldog."[23] It is obvious that Martin was aware of the high significance of the trial when he stated, "I consider this cause not only of importance to the respondent and his accusers, but to my fellow citizens in general, and to their posterity, for the decision at this time will establish a most important precedent as to future cases of impeachment."[24] The fundamental question proved to be interpretation of the term "impeachment." The two extremes ranged from the Republican opinion that it was a mere inquest concerning a person's fitness for office, while the Federalists insisted that an impeachable offense must be indictable.[25]

Senator William Branch Giles of Virginia expressed the Republican theory in a conversation witnessed and recorded by John Quincy Adams. Giles abhorred the idea of an independent judiciary and said,

---

[22]Bruce, Randolph, 1:203-04.

[23]Ashley M. Gould, "Luther Martin and the Trials of Chase and Burr," Georgetown Law Journal 1(1912):17.

[24]Chase, Trial, 2:132.

[25]Dumas Malone, Jefferson the President: First Term, 1801-1805 (Boston: Little, Brown, and Co., 1970), p. 478.

> A trial and removal of a judge upon impeachment need not imply any criminality or corruption in him . . . . And removal by impeachment was nothing more than a declaration by Congress to this effect: You hold dangerous opinions, and if you are suffered to carry them into effect you will work the destruction of the nation. We want your offices, for the purpose of giving them to men who will fill them better.[26]

Impeachment to some Republicans was essentially a political weapon, "a part of the constitutional machinery for making appointments and removals."

In his answer to the articles, Chase denied all the charges against him and in particular the eighth article concerning his charge to the Baltimore grand jury. He insisted that "It has been the practice in this country, ever since the beginning of the revolution . . . for the judges to express from the bench, by way of charge to the grand jury, and to enforce to the utmost of their ability, such political opinions as they thought correct and useful." Chase insisted that there was no law against this practice, and in some cases, legislatures had encouraged judges to follow this practice. He also pointed out that the Supreme Court had adopted this practice when the judicial system was established, and if Congress considered it dangerous, they should have passed a law forbidding it.[27] Chase implied he was being tried for his political convictions when he attacked the prosecution for its failure to impeach

---

[26]Adams, Memoirs, 1:322.

[27]Chase, Trial, 1:96-97.

District Judge Cyrus Griffin of Virginia, who presided with him at one of the trials in question and concurred in his actions.[28]

> In respect to the present prosecution, I will make but one remark. That I am impeached for giving on the trial of Callender, several judicial opinions, in which judge Griffin, my associate, concurred; my opinions are held to be criminal, or that they flowed from partiality, and an intention to oppress Callender; but the same opinions given by my associate have been considered perfectly innocent.[29]

This supports the idea of a plan to get rid of Chase.

On 9 February 1805, John Randolph opened the proceedings with a speech in which he repeatedly apologized for his shortcomings.[30] He set forth the evidence which the House would present and closed by saying, "I am sensible, very lame and inadequate, to discharge the duty incumbent on me . . . ."[31] Following this, the managers and defense counsel examined over fifty witnesses concerning the charges in the eight articles.

Article I accused Chase of conducting himself in "a manner highly arbitrary, oppressive, and unjust" when he presided at the trial of John Fries in Philadelphia.[32] Articles II,

---

[28]Richard E. Ellis, The Jeffersonian Crisis: Courts and Politics in the Young Republic (New York: Oxford University Press, 1971), pp. 97-98.

[29]Chase, Trial, 1:18.

[30]Ibid., p. 107.

[31]Ibid., p. 126.

[32]Ibid., p. 5.

III and IV alleged incorrect rulings by Chase and "manifest injustice, partiality, and intemperance" during the trial of James Callender in Richmond.[33] Neither the record nor the testimony show that either Fries or Callender were denied or failed to get fair trials. The actions of the defense counsels in both cases were probably more open to censure than the actions of Judge Chase. If there were any errors in the trials, they could have been remedied by appeal to the Supreme Court. It was well established in the trial that Chase expounded his political views and antagonisms while acting in his judicial capacity. Although highly improper, these acts of indiscretion were hardly of sufficient importance to justify impeachment.[34]

The fifth and sixth articles merely alleged an error on the part of Chase in interpreting the criminal procedure of a local Virginia law. Article VII charged Chase with holding over a Delaware grand jury for an additional day, this totaling two days service.[35] The eighth article accused Chase of making "an intemperate and inflammatory political harangue" to the Baltimore grand jury, using offensive language, and attacking the Republican administration.[36] John Montgomery,

---

[33]Ibid., pp. 5-6; Paul S. Clarkson and R. Samuel Jett, Luther Martin of Maryland (Baltimore: The Johns Hopkins Press, 1970), p. 216.

[34]R. W. Carrington, "The Impeachment Trial of Samuel Chase," Virginia Law Review 9(1923):498-99.

[35]Chase, Trial, 1:6-8; Clarkson and Jett, Martin, p. 217.

[36]Chase, Trial, 1:8.

the newspaper reporter who had brought Chase's speech to Jefferson's attention, gave his testimony at the trial, and it was revealed after examination of other witnesses that Chase's written copy of the speech was accurate, while Montgomery's account was exaggerated.[37]

Following the testimony of the witnesses, the closing arguments began with addresses by three of the managers, Early, Campbell and Clarke, followed by speeches from all of Chase's lawyers. The concluding arguments were given by the three "strongest" Republican managers, Nicholson, Rodney and Randolph. The pitfall of the managers was their inconsistency on the impeachment theory. While some supported Giles' theory, the others abandoned it and tried to prove criminality. Randolph had forced this by including in the impeachment articles certain intricate questions of law involved in the Fries and Callender trials. The evidence for these articles concerned the sarcasm and lack of manners displayed by Chase, for which the managers failed to prove the judge guilty of high crimes or misdemeanors. The defense agreed that Chase was unmannerly, but they insisted that the absence of manners did not violate any law and therefore was not impeachable.[38] Luther Martin in his argument stressed that his client may have violated the principles of politeness but not the principles of law.[39]

---

[37]Ibid., pp. 212-19; Clarkson and Jett, Martin, p. 217.

[38]Herbert A. Johnson, "Impeachment and Politics," South Atlantic Quarterly 63(1964):559.

[39]Chase, Trial, 2:208.

Surely a judge was not to be impeached for lack of elegance in his deportment.[40] Joseph Hopkinson, another defense counsel, asked, "Is the Senate of the United States solemnly convened and held together in the presence of the nation to fix a standard of politeness in a judge, and mark the precincts of judicial decorum?"[41]

The defense insisted that an indictable violation of law was required by the Constitution, but it was clear that however injudicious Chase's conduct might have been, he was not guilty of any indictable offense as a result of his sarcastic behavior, his announcement in writing of the "law of the case," his misinterpretation of a local statute or his delivery of a political speech offensive to the opposite party. The defense argued this proposition with more skill and with a stronger legal position than the prosecution could equate.[42] The prosecution's case was weakened by the disparity between the articles' allegations and the evidence presented to support them. Joseph Hopkinson pointed this out to the Senate.

> I admit, indeed, that the honorable managers are . . . under the necessity of making their election between the articles and evidence as the foundation of their argument; for they are so totally dissimilar that they could not take them both: they meet in so few

---

[40]Albert J. Beveridge, Life of John Marshall, 4 vols. (Boston and New York: Houghton Mifflin Co., 1916-19), 3:202.

[41]Chase, Trial, 2:14.

[42]Clarkson and Jett, Martin, P. 218.

> and such immaterial points, that no man can argue both for five sentences--This being the situation of the gentlemen, he has thought proper to select the articles therein set forth as the foundation of his argument in defiance of the testimony. In the observation I shall have the honor to submit, I propose to take the evidence as my text and guide, and leave the articles, to shift for themselves, under the care and patronage of our honorable opponents.[43]

The most convincing closing argument was delivered by Luther Martin, the most distinguished and able lawyer present at the trial. Martin's speech lasted for more than a day, and it was his task to concentrate on Articles V and VI. He carefully reviewed the Constitution on the subject of impeachment and reemphasized that indictable crimes and misdemeanors were prerequisite to impeachment.[44]

> Admit that the House of Representatives have a right to impeach for acts which are not contrary to law, and that thereon the Senate may convict, and the officer be removed, you leave your judges, and all your other officers at the mercy of the prevailing party . . . . They must be the tools or the victims of the victorious party.[45]

John Quincy Adams noted that "the trial itself was conducted with exemplary order, decorum and solemnity. A great mass of illegal and improper evidence was indeed admitted, but

---

[43]Chase, Trial, 2:22-23; Clarkson and Jett, Martin, p. 217.

[44]Clarkson and Jett, Martin, pp. 221-26.

[45]Chase, Trial, 2:140-41.

that was always by consent of the parties."[46] Chase "indulged his accusers with the utmost license of investigation which they ever derived, and contented himself with observing to the court that he expected to be judged upon the legal evidence in the case."[47]

The testimony of John Marshall at Chase's trial clearly indicated that he was fearful of the outcome of Republican impeachment plans.[48] Marshall had been present at Callender's trial, and Chase asked Marshall to write his account of the trial. In Marshall's letter to Chase he suggested that appeals from the Supreme Court should perhaps go to Congress. This was the "most radical method for correcting judicial decision ever advanced" and directly contradicted the reasoning behind Marbury v. Madison. The only explanation for this was that the chief justice was seriously alarmed and rightfully so. Marshall feared that the Republicans were planning to remove him from the "Supreme bench" and that Jefferson would replace him with someone whose ideas would be fatal to those fundamental principles of government as established by Marshall.[49] The chief justice seemed to accommodate the prosecution, for he was uncertain of the powers of the judiciary

---

[46]John Quincy Adams to John Adams, 8 March 1805, John Quincy Adams, Writings of John Quincy Adams, ed. Worthington C. Ford, 7 vols. (New York: The Macmillan Co., 1914), 3:112.

[47]Ibid., p. 113.

[48]Chase, Trial, 1:254-61.

[49]Beveridge, Marshall, 3:176-78.

when pitted against the executive and legislative branches. His unsteadiness and apprehension were in response to the Republican assault on the Court.[50]

The Chase trial was clearly a party prosecution as is evidenced by the actions of those involved. John Quincy Adams noted in his diary that Randolph, one of the prosecutors, was frequently seen with Giles, one of the judges.[51] On the other hand, several Federalist senators, also judges, were in consultation with Martin and the other defense counsels.[52] It is interesting to note that the most impartial figure was Vice President Aaron Burr, who presided over the trial. He was complimented on his conduct by Luther Martin at the end of the trial.[53] Burr was a social pariah, owing to his recent and fatal duel with Alexander Hamilton, but because of his position he was wooed by Jefferson and the Republicans. Probably the most obvious advance was made by Giles when he drew up a petition, signed by nearly all the Republican senators, asking New Jersey Governor Joseph Bloomfield to drop the prosecution of murder against Burr. The vice president remained impartial and uncommitted, realizing the motives behind all the attention,

---

[50]Leonard Baker, John Marshall: A Life in Law (New York: Macmillan Publishing Co., 1974), pp. 422-23, 434.

[51]Adams, Memoirs, 1:351.

[52]Claude G. Bowers, Jefferson in Power: The Death Struggle of the Federalists (Boston: Houghton Mifflin Co., 1936), pp. 290-91.

[53]Chase, Trial, 2:247.

and he conducted himself with dignity throughout the momentous trial.[54]

Partisan conduct in the trial was not limited to the participants. The newspapers followed the impeachment and trial and made their own observations. The pro-Jeffersonian Philadelphia Aurora editorialized,

> let everyone pray that the abhorrence of the nation for the conduct of this judge may be speedily evidenced by his expulsion from office by their representatives. Never, never was the bench so much disgraced as by judge Chase; talk of Jeffries and in comparison with Chase he was a faithful officer and honest man.[55]

The Boston Columbian Centinel, in contrast, said of Chase,

> The high confidence reposed in him by his countrymen and WASHINGTON, is the best voucher of his integrity.--Incorruptible in all his views, he fears not investigation; and though he knows how feeble is the barrier of innocence, when opposed by party spirit and power, he bears up with dignity under the load of obloquy, and posterity will say of him, he was 'The MAN who dared be honest in the worst of times.'[56]

The final blow to the Republicans came in the closing arguments for the prosecution. Nicholson emphasized the inconsistencies of the Republican managers when he replied to the accusation by the defense that

---

[54]Beveridge, Marshall, 3:181-83.

[55]Philadelphia Aurora and General Advertiser, 22 March 1804.

[56]Boston Columbian Centinel, 14 April 1804.

> we resorted to the forlorn hope of contending that an impeachment was not a criminal prosecution, but a mere inquest of office. For myself I am free to declare that I heard no such position taken. If declarations of this kind have been made, in the name of the managers I here disclaim them. We do contend that this is a criminal prosecution, for offenses committed in the discharge of high official duties, and we now support it . . . .[57]

The managers should have attempted to promote the theory that impeachment was in no sense like an indictment for crimes but was the only way to remove a meddlesome judge. By contending that it was absurd for a federal judge, appointed for life, to be at full liberty to criticize in the most insolent way, the government to whom the people had entrusted their affairs, the prosecution would have been more consistent and convincing. That tremendous respect for "the law" enabled Chase's skillful legal counsel to secure his acquittal on the basis that an impeachable offense must be indictable.[58]

Randolph made the last speech which was weak, unconvincing and extremely bitter in its denunciation of Chase. Adams noted that he made his speech "with as little relation to the subject-matter as possible--without order, connection, or argument . . . much distortion of fact and contortion of body, tears, groans, and sobs, with pauses for recollection, and continual complaints of having lost his notes."[59]

---

[57]Chase, Trial, 2:334-35.

[58]Edward Channing, The Jeffersonian System, 1801-1811 (New York: Harper and Brothers, 1906), p. 121.

[59]Adams, Memoirs, 1:359.

Randolph's frail body was in a low state of health as a result of habitual drunkenness and excessive labor during the second session of the eighth Congress.[60] He made reference to this in his speech: "I should, long since, have asked a respite from a task, to which I feel myself physically, as well as morally incompetent . . . . My weakness and want of ability prevent me from urging my cause as I could wish--but it is the last day of my sufferings and of yours."[61] Randolph did present a good argument on impeachable offenses which, had it been consistently supported and followed through, would have been more convincing than trying to prove criminality on the intricate questions of law in the articles. He argued that if impeachable offenses were indictable, the Constitution should have read that "any civil officer of the United States, convicted on an indictment, should be removed from office." He maintained that the Constitution did contemplate a distinction between an impeachable and an indictable offense.[62]

> [T]his doctrine, that impeachable and indictable are convertible terms, is almost too absurd for argument . . . . Strip it of technical jargon, and what is it, but a monstrous pretension that the officers of government,--so long as they steer clear of your penal statutes . . . may, to the whole length of the tether of the constitution, abuse

---

[60]Bruce, Randolph, 1:216.

[61]Chase, Trial, 2:480.

[62]Ibid., p. 452.

> that power, which they are bound to exercise . . . .[63]

On 1 March 1805, the Senate convened in order to pronounce judgment on Samuel Chase. All thirty-four members were present, of whom twenty-five were Republicans. Conviction required twenty-two votes. Unlike the method of voting used in Pickering's trial, the senators were to answer "guilty" or "not guilty" concerning high crimes and misdemeanors as charged in each article.[64] Chase was acquitted on every charge. On the fifth article, not one senator voted guilty, and on four others the majority voted not guilty. On the eighth article, concerning the charge to the grand jury, nineteen guilty votes were cast, the highest number for any article.[65] Chase might have been convicted and removed on that charge had not prejudice and resentment been aroused by combining so many other matters with this.[66] All Federalists voted not guilty on every article.[67] To the Federalists, Chase's acquittal was a great triumph, which tended to show that there were limits to party discipline.[68]

There are several explanations for Republican defections on the votes. Many realized that after the Pickering trial,

---

[63]Ibid., p. 453.

[64]Malone, Jefferson: First Term, p. 479.

[65]Chase, Trial, 2:493.

[66]Channing, Jeffersonian System, pp. 121-22.

[67]Chase, Trial, 2:493.

[68]Hildreth, History of the U.S., 5:543.

the conviction of Chase would lead to further and more serious attacks on the Supreme Court, which they did not want. Some Republicans were critical of Randolph and his attitude and did not want to increase his prestige and influence.[69] Republican Senator William Cocke of Tennessee, who had voted guilty on all but one article, spoke to John Quincy Adams after the trial "with much severity of Mr. Randolph and his conduct upon this impeachment, and . . . charged him with excessive vanity, ambition, insolence, and even dishonesty . . . ." In addition, the senator expressed that he was sorry the impeachment had even started and was pleased by Chase's acquittal.[70]

Another factor contributing to the final verdict was the action of Jefferson. The president had recommended Pickering's impeachment, which added support to his partisan conviction, but Jefferson was unwilling to become directly involved in any way with the Chase impeachment.[71] The president did not appear at the trial, even as a spectator.[72] After the impeachment of Chase had begun, there is no record of Jefferson mentioning it. He was disillusioned about impeachment as evidenced by his expressions both after the Chase trial and later in his life. After the failure of impeachment as a means of removing politically undesirable judges, Jefferson decided the Constitution

---

[69]Ellis, Jeffersonian Crisis, pp. 102-03.

[70]Adams, Memoirs, 1:364.

[71]Ellis, Jeffersonian Crisis, p. 104.

[72]Malone, Jefferson: First Term, p. 477.

should be changed to limit judges to six year terms with re-appointment by the president upon approval of both legislative houses. "If this would not be independent enough, I know not what would be such, short of total irresponsibility . . . ."[73] In a letter to William Branch Giles in 1807, Jefferson said that "impeachment is a farce which will not be tried again."[74] The president also seemed to believe that the judiciary was forever protected since impeachment was a failure. In an 1816 letter to Samuel Kercheval, Jefferson wrote, "the judges of the highest courts are dependent on none but themselves . . . we have made them independent of the nation itself. They are irremovable, but by their own body, for any depravities of conduct, and even by their own body for the imbecilities of dotage."[75]

To Judge Spencer Roane, Jefferson wrote in 1819, "The Constitution . . . is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please."[76] In 1820 he wrote to Thomas Pitcher,

> The judiciary of the United States is the subtle corps of sappers and miners

---

[73]Evan Haynes, The Selection and Tenure of Judges (____, 1944), pp. 93-94.

[74]Jefferson to Giles, 20 April 1807, Thomas Jefferson, The Works of Thomas Jefferson, ed., Paul Leicester Ford, 12 vols. (New York: G. P. Putnam's Sons, 1904-05), 10:387.

[75]Jefferson to Kercheval, 12 July 1816, Writings of Jefferson, 15:34.

[76]Jefferson to Roane, 6 September 1819, Jefferson's Letters, comp. William Whitman (Eau Claire, Wisc.: E. M. Hale and Co., 194?), p. 336.

> constantly working underground to undermine the foundation of our confederated fabric . . . . Having found, from experience, that impeachment is an impracticable thing, a mere scare-crow, they consider themselves secure for life.[77]

Jefferson observed that the American Constitution had opened the way to judicial tyranny by copying and then surpassing English judicial independence.[78] "We have erred in this point, by copying England, where certainly it is a good thing to have the judges independent of the King. But we have omitted to copy their caution also, which makes a judge removable on the address of both legislative Houses."[79] Rather than rely on impeachment, Jefferson preferred the English system of removal. He insisted that even the insane and alcoholic Pickering would have held his bench if a real defense had been offered. The chance to have his commission renewed intermittently was to Jefferson all the independence that an honest and competent judge required.[80] By 1825 Jefferson was still complaining of the judges' usurping legislation in interpreting the Constitution and declaring laws unconstitutional.

---

[77]Jefferson to Pitcher, 25 December 1820, Works of Jefferson, 12:177.

[78]Donald O. Dewey, Marshall Versus Jefferson: The Political Background of Marbury v. Madison (New York: Alfred A. Knopf, 1970), p. 156.

[79]Jefferson to William T. Barry, 2 July 1822, Writings of Jefferson, 15:389.

[80]Dewey, Marshall Versus Jefferson, p. 157.

He wrote to Edward Livingston that he would be entitled to society's gratitude if he could propose a system for curbing judicial power. "Experience has proved that impeachment in our forms is completely inefficient."[81]

Randolph and Nicholson were also displeased with the ineffectiveness of the impeachment process, and their attitudes were added to partisan criticism of the trial. Immediately after the verdict was announced, they returned to the House and "vented their spleen against the decision with all their virulence." Randolph introduced a resolution for amending the Constitution so that judges would be removable upon joint address of both Houses to the president. Nicholson proposed a resolution that members of the Senate should be liable to be recalled at any time by their respective legislatures.[82] They both were bitterly disappointed in the verdict, and nothing came of either amendment.

The Chase trial was certainly partisan, and impeachment was being used as a political weapon, but it cannot be proven that Chase's impeachment was merely a step to the removal of all Federalist judges; nor is there any record of a scheme being led by Jefferson to accomplish this removal. It is doubtful that the Republicans were prepared to impeach John Marshall if Chase had been convicted, but it is certain that

---

[81]Jefferson to Livingston, 25 March 1825, Writings of Jefferson, 16:113-14.

[82]Adams, Memoirs, 1:365.

a conviction of one justice would have given them greater control over the chief justice and all the judiciary. Marshall would have lived with the fear that if he did something to displease the Jeffersonians, they could have, and most probably would have, impeached and removed him. It is impossible to imagine as strong a case being made against Marshall because, although as political as Chase, he differed in style from the Marylander. Marshall was too wise to antagonize the American democracy with antidemocratic lectures.[83] Impeachment must originate in the House, and if plans were already made for Marshall's impeachment at the time of the Chase trial, one of the leaders would likely have been Randolph. He had led the way with the Pickering and Chase impeachments and was a manager in both trials. Randolph expressed profound admiration for Marshall and praised him highly at Chase's trial, which supports the contention that if any plans existed to impeach Marshall, Randolph was not privy to them.[84]

The trial resulted in a notable improvement in judicial decorum and strengthened the independence of the judiciary. Impeachment was not a farce as Jefferson had stated but would be used only in cases when the judge had clearly violated a law and not for rendering an unpopular opinion.[85] The trial

---

[83]Dewey, Marshall Versus Jefferson, pp. 149-50.

[84]Bruce, Randolph, 1:201.

[85]Johnson, Randolph, p. 526.

established three important points. First, the nation would not tolerate abuses of the Constitution, therefore, judges should not be impeached for frivolous reasons. Second, judges should not use their positions on the bench for partisan purposes. Finally, it was established that the United States Senate was a body that could rise on occasion to the heights of nonpartisanship.[86] The Federalists had admitted during the trial that partisan speeches from the bench were improper, and since the Chase impeachment, there has never been a recorded instance of a federal judge delivering such an address.[87]

The most important outcome of Chase's trial was the precedent set concerning the interpretation of impeachment. Although the Federalists were victorious in the verdict, their extreme theory that impeachment must involve an indictable offense was not adopted. Every reference to impeachment in the Constitution suggests that it must involve criminality, but there are impeachable acts that are not indictable. The offense must be serious and not merely an error which the Senate had judged to be misbehavior. Since judges hold their offices for life during "good behavior," and impeachment is the only method of removal, it must include all cases of willful misconduct in office, whether indictable or not.[88]

---

[86]Baker, Marshall, p. 437.

[87]Bowers, Jefferson in Power, p. 292.

[88]Corwin, Marshall, p. 78.

The trial of Samuel Chase, the only Supreme Court justice ever to be impeached, was both important and significant. The Constitution did not make honest error impeachable, and Chase was undoubtedly both honest and in error.[89] Impeachment of judges as a political weapon was rendered forever impractical, and judicial independence was more firmly established, but the trial of President Andrew Johnson in 1868 showed that partisanship in impeachment proceedings still existed.

---

[89]Irving Brant, Impeachment: Trials and Errors (New York: Alfred A. Knopf, 1973), p. 82.

CHAPTER V

EPILOGUE AND CONCLUSION

James Wilson, an early Federalist supreme court justice, said in one of his law lectures that, "In the United States . . . impeachments are confined to political characters, to political crimes and misdemeanors, and to political punishments."[1] An examination of the impeachment process reveals that this statement is true. When the president nominates a candidate for federal office, he is exercising a political power. Likewise, the Senate exercises a political power when it confirms the appointment. If the House impeaches the officer, that is also an exercise of a political power. If convicted, the official is removed from office and may be disqualified from holding any other office. Its function performed, the political power operating through the agency of impeachment ends at this point. Impeachment may deprive the officer of political privilege and political capacity, but it cannot take away his civil rights. The ceremony of impeachment is judicial, but its purpose is political. It is initiated against political offenses and culminates in a political judgment. It imposes political penalties, and except for its administration, it is a political

---

[1]James Wilson, The Works of James Wilson, ed. James DeWitt Andrews, 2 vols. (Chicago: Callaghan and Co., 1896), 2:46.

remedy in every sense. It checks political evils with altogether political consequences.[2]

During an era of rivalry between the Federalist and Republican parties, the Pickering and Chase impeachments established the principle that the framers' intentions were not to be construed to mean that impeachment was a method of removing officials, namely, judges appointed for life, merely because they disagreed with the majority party in power. Impeachment is political in character, but it is not a political weapon. In a later era, a struggle between the executive and legislative branches resulted in an impeachment which sought to establish a precedent that a president is removable for thwarting the will of the majority party.[3] The ascendancy of Andrew Johnson to the presidency on 15 April 1865 initiated the struggle which culminated in the only impeachment and trial of a president in American history.[4] The ultimate acquittal of Johnson preserved the American system of balance of government powers and set a precedent that the chief executive was not to be convicted upon

---

[2]Wrisley Brown, "The Impeachment of the Federal Judiciary," Harvard Law Review 26(1913):697-98.

[3]Fawn M. Brodie, Thaddeus Stevens: Scourge of the South (New York: W. W. Norton and Co., 1959), p. 337.

[4]Andrew Johnson, Trial of Andrew Johnson, 3 vols. (Washington, D.C.: Government Printing Office, 1868), 1:147; Recent monographic studies by Michael Les Benedict, The Impeachment and Trial of Andrew Johnson (New York: W. W. Norton and Co., 1973) and Hans Louis Trefousse, Impeachment of a President: Andrew Johnson, the Blacks, and Reconstruction (Knoxville: The University of Tennessee Press, 1975) detail Andrew Johnson's impeachment and trial.

partisan grounds or be made politically responsible to Congress, through the process of impeachment as a matter of custom outside the Constitution.[5]

Following the assassination of President Abraham Lincoln, which brought Johnson to the presidency, the disturbing conditions produced by the aftermath of Civil War raised the question as to whether Congress or the president had the constitutional authority to carry out reconstruction. When Johnson tried to execute Lincoln's policies after he became president, a breach opened up between the executive and Congress over how to handle and readmit the southern states.[6] The Radical Republicans in Congress favored a reconstruction policy that would guarantee equality for the freedmen and minimize the political influence of the former slaveholders and leaders in the former Confederate government. These were strong actions that would revolutionize southern society. The spokesman for the radicals in the House was Thaddeus Stevens of Pennsylvania, the recognized leader of the Republican majority. In the Senate where the radicals had less power, Charles Sumner of Massachusetts was the most outspoken of the group. The more conservative Republicans were led by such men as John A. Bingham of Ohio

---

[5]Trefousse, Impeachment, p. 183; J. G. Randall and David Donald, The Civil War and Reconstruction, 2nd ed. rev. (Lexington, Mass.: D. C. Heath and Co., 1969), p. 616.

[6]Francis Fessenden, Life and Public Services of William Pitt Fessenden, 2 vols. (1907; reprint ed., New York: Da Capo Press, 1970), 2:156.

in the House and in the Senate, where they carried more influence, by William Pitt Fessenden of Maine.[7]

Andrew Johnson was an anomaly as president since he was a state's rights Jacksonian Democrat who had never identified himself with the Republican party.[8] He was the only senator from the seceded states who had remained loyal to the Union during the Civil War, and Lincoln had appointed him to be military governor of Tennessee. A poor, self-educated tailor, he was nominated to the vice-presidency by the Republican (Union) party as Lincoln's running mate in 1864.[9] Upon Lincoln's assassination, Johnson suddenly became the leader of victorious national forces whose goals he did not really understand or share.[10]

Preservation of the Union had been Lincoln's primary goal, and he believed that the states were indestructible in spite of their rebellion. His goal was to return the southern states to their pre-war status as soon as possible, while he viewed equality of the Negro as secondary. Johnson was a strong unionist who followed Lincoln's policies. He constantly

---

[7]Benedict, Impeachment, pp. 8-9.

[8]Robert A. Diamond, ed., Impeachment and the U.S. Congress (Washington, D.C.: Congressional Quarterly, 1974), p. 4; George S. Boutwell, Reminicences of Sixty Years in Public Affairs, 2 vols. (1902; reprint ed., New York: Greenwood Press, 1968), 2:96-97.

[9]Benedict, Impeachment, p. 4.

[10]Raoul Berger, Impeachment: The Constitutional Problems (Cambridge: Harvard University Press, 1973), p. 253.

suffered from comparison with Lincoln, and although Lincoln would have encountered radical opposition just as Johnson did, he probably would have yielded to some extent. Johnson did not know how to do this, especially when he believed he was right.[11] Johnson believed in his cause and preferred removal for support of the Constitution to continuance in office with a Congress which had usurped powers not belonging to it.[12] The president had a tremendous faith in the American people, which sustained him through the struggle, and he believed that they would accept his views on the Constitution, the union and reconstruction.[13] Both the president and the radicals were earnest about their convictions, and thus, they were set on a collision course. The radicals believed that Johnson's reconstruction policy would promote the return of the Democrats, allied with the southernors, to power, and this would have the effect of neutralizing the political results of the Civil War.[14]

The radicals in Congress, citing the black codes instituted in the South, southern riots, and the Ku Klux Klan activities to support their argument, planned a series of reconstruction acts in order to protect the ex-slaves and Union men in the

---

[11]Benjamin C. Truman, "Anecdotes of Andrew Johnson," Century Magazine 85(1912-13):435.

[12]"The American Constitution and Impeachment of the President," Blackwood's Edinburgh Magazine, 66, Am.ed. (1868): 716.

[13]Trefousse, Impeachment, p. 85.

[14]John B. Henderson, "Emancipation and Impeachment," Century Magazine 85(1912-13):202.

South. They proceeded with their own reconstruction plans over Johnson's vetoes. Stevens, supported by other radicals, advocated the extreme view that the nation's sovereignty was vested in Congress and was not to be shared by the executive or judicial branches. Most of the Republicans turned against Johnson when they were convinced that he would not support a minimal program of southern reconstruction.[15]

The key to Johnson's impeachment began with three acts passed by Congress on 2 March 1867.[16] The first law or reconstruction act gave the army control over reconstruction. The army appropriation act put the secretary of war in control of the army, to the exclusion of the president, with all orders going through the general of the army in Washington. Finally, the tenure of office act gave the Senate control over removal of officers appointed with its consent. Its purpose was actually to protect Secretary of War Edwin M. Stanton, a holdover appointee of Lincoln who was sympathetic with the radicals.[17] It was the violation of the last law that prompted the successful impeachment resolution. Representative James G. Blaine of Maine observed that as the executive and legislative departments grew further apart, Johnson began to remove

---

[15]Brodie, Stevens, pp. 293, 254.

[16]Acts of 2 March 1867, U.S., Statutes at Large 14:428, 430, 485.

[17]H. H. Walker Lewis, "The Impeachment of Andrew Johnson: A Political Tragedy," American Bar Association Journal 40(1954): 17.

Republicans from office who opposed his reconstruction plans. The bill depriving the president of the power of removing officers was passed with misgivings. It was an extreme measure which departed from the intentions of the founders and the practice of the government up to that time.[18]

As late as 1867, the more conservative Republicans hoped for reconciliation with Johnson, and they were able to block several attempts by the radicals to impeach the president.[19] One conservative Republican, Representative Shelby Cullom of Illinois, regretted the strained relations between the executive and legislative branches and tried to smooth the differences in a discussion with Johnson. When the president refused to yield, Cullom joined the radicals and voted with them. Later, in looking back on those times he noted,

> Bills were passed, promptly vetoed, and the bills immediately passed over the President's veto. Many of the bills were not only unwise legislation but were unconstitutional as well. We passed the Tenure of Office bill; we attempted to restrict the President's pardoning power; and as I look back over the history of the period, it seems to me that we did not have the slightest regard for the Constitution.[20]

---

[18]James G. Blaine, Twenty Years of Congress From Lincoln to Garfield, 2 vols. (Norwich, Conn.: Henry Hill Publishing Co., 1886), 2:267, 270-72.

[19]Michael Les Benedict, "A New Look at the Impeachment of Andrew Johnson," Political Science Quarterly 88(1973):351, 352.

[20]Shelby M. Cullom, Fifty Years of Public Service: Personal Recollections of Shelby M. Cullom (1911; reprint ed., New York: Da Capo Press, 1969), pp. 152-53.

Johnson decided that Stanton was opposed to his policies and was secretly plotting with the radicals, so he decided to remove him. The president was slow in making decisions, but once Johnson decided something, nothing could prevent him from following through.[21] Although Stanton and the president were in disagreement, the secretary would not do Johnson the courtesy of resigning because he was convinced that he must stay in his office to prevent evil. Johnson should have dismissed Stanton long before their relations became so intolerably strained, but he waited too late, which was a political blunder. On 5 August 1867, the president asked Stanton to resign. When he refused, Johnson suspended him on 12 December 1867 according to the terms of the tenure of office act, thereby seemingly recognizing its validity. He should have fired the secretary, claiming justification on the grounds of his constitutional right.[22] On 13 January 1868, the Senate reinstated Stanton under the terms of the tenure of office act, thus refusing to concur in Johnson's suspension of the secretary. The president claimed his constitutional authority and dismissed Stanton on 21 February, declaring the tenure of office act to be unconstitutional.[23]

---

[21]Gaillard Hunt, "The President's Defense," Century Magazine 85(1912-13):427.

[22]Brodie, Stevens, pp. 298, 329-31.

[23]Diamond, Impeachment, p. 4.

On 24 February, the House voted on a resolution to impeach Johnson. This time it passed one hundred twenty-six to forty-seven by a strict party vote, with seventeen not voting.[24] The real cause of the impeachment was that a majority of the Republicans were convinced reconstruction could not be successfully accomplished while Johnson was president. The success of the party had come to depend upon the congressional solution to the southern problem, if the Democrats were to be defeated in 1868. Not only the radicals, but also the conservatives had drawn this conclusion, and thus the Republicans embarked upon impeachment.[25]

Speaking on the impeachment resolution, Thaddeus Stevens said, "In order to sustain impeachment under our Constitution I do not hold that it is necessary to prove a crime as an indictable offense . . . ." He added that this is "a purely political proceeding. It is intended as a remedy for malfeasance in office and to prevent the continuance thereof. Beyond that it is not intended as a personal punishment for past offenses or for future example." He further stated, "This is not to be the temporary triumph of a political party, but is to endure in its consequence . . . ."[26] Moderate Republican Representative James Brooks of New York warned against

---

[24]U.S., Congress, House, Congressional Globe, 40th Cong., 2nd sess., 24 February 1868, p. 1400.

[25]Trefousse, Impeachment, pp. 140-41.

[26]House, Globe, 40th Cong., 2nd sess., 24 February 1868, pp. 1399, 1400.

the fatal danger of establishing such a precedent if removal were successful. "[Y]ou settle that hereafter a party having sufficient majority in the House and the Senate can depose the President of the United States. You establish a precedent which all future parties in all time to come will look to." He asked the congressmen, "Is the possession of these offices from now till March, 1869, worth the sacrifice of our country . . . ?"[27]

On the second and third days of March 1868, eleven articles of impeachment were read and adopted by the House.[28] The first nine dealt with the removal of Stanton and the violation of the tenure of office act. Article ten accused Johnson of bringing Congress into disrepute through various speeches that he had made. The last article was a summation of the others and accused the president of attempting to violate acts of Congress in pursuance of his assertion that Congress was not a lawful body.[29] The trial opened on 30 March after the president's counsel had been given only nine days to prepare his case, although he had requested forty.[30] Party feeling was so bitter that an impartial trial was an impossibility. The Republican

---

[27]Ibid., 22 February 1868, p. 1339.

[28]Ibid., 2 and 3 March 1868, pp. 1616-618, 1642-643.

[29]Trefousse, Impeachment, pp. 138-39.

[30]Johnson, Trial, 1:87; Gideon Welles, Diary of Gideon Welles: Secretary of the Navy under Lincoln and Johnson, ed. Howard K. Beale, 3 vols. (New York: W. W. Norton and Co., 1960), 3:313.

majority often overruled highly impartial rulings of Chief Justice Salmon P. Chase, who presided over the trial. Those senators who opposed conviction were subjected to all manner of political ostracism.[31] Senator Edmund Ross of Kansas, one of the seven Republicans who voted for Johnson's acquittal, commented later on the partisanship of the trial.

> The weakest point . . . was the refusal of the more than three-fourths Republican majority of the Senate to permit the reception of testimony in his [Johnson's] behalf. That majority naturally gave them absolute control of the proceedings, and they should have realized from the outset that they could not afford to give it the least tinge of partisan bias.[32]

Ross believed that the refusal of testimony on Johnson's behalf was unfortunate and lowered the dignity of the proceeding. He observed that the Republican senators acted like prosecutors rather than judges sworn to give an impartial trial and judgment. Their actions gave the appearance of a conspiracy to remove the president for partisan purposes regardless of the testimony or facts.[33] The House managers relied mainly on Johnson's removal of Stanton as a direct violation of the tenure of office act in their prosecution.[34] It is interesting that

---

[31]Charles Shirley Potts, "Impeachment as a Remedy," St. Louis Law Review 12(1927):35-36.

[32]Edmund G. Ross, History of the Impeachment of Andrew Johnson President of the United States (Santa Fe: New Mexican Printing Co., 1896), p. 155.

[33]Ibid., pp. 157, 163.

[34]Diamond, Impeachment, p. 4.

in the discussions of the bill in cabinet meeting, all members had advised Johnson to veto it, most emphatically, Stanton. Johnson asked him to write the veto, but because of rheumatism in his arm, the Ohioan declined, although he did furnish references for the veto message.[35]

Benjamin R. Curtis of Massachusetts, one of Johnson's defense counsels and a former supreme court justice, argued that Stanton was not covered by the tenure of office act because it did not extend protection to cabinet members not appointed by the president under whom they were serving, and Stanton had been appointed by Lincoln. Curtis read the debates on the bill from the Congressional Globe, which revealed that Stanton was not intended to be protected.[36] Curtis pointed out that although Johnson did not actually violate the act, the law was unconstitutional and the only way to have it tested was to violate or attempt to violate it.[37] The president was, in essence, saying that the law is unconstitutional; Stanton was not within it; and if it were constitutional and Stanton

---

[35]Lately Thomas, The First President Johnson: The Three Lives of the Seventeenth President of the United States of America (New York: William Morrow and Co., Inc., 1968), pp. 518-19; William G. Moore, "Notes of Colonel W. G. Moore, Private Secretary to President Johnson, 1866-1868," American Historical Review 19(1913):110.

[36]Benjamin Robbins Curtis, A Memoir of Benjamin Robbins Curtis LL.D. with Some of His Professional and Miscellaneous Writings, ed. Benjamin R. Curtis, [son], 2 vols. (Boston: Little, Brown and Co., 1879), 2:343-53.

[37]Ibid., p. 365.

was within the law, given the facts presented, it was inconceivable that the Senate would still advise Johnson to continue Stanton in office.[38]

On 16 May 1868, the Senate was prepared to vote, and a motion was made that the eleventh article be voted upon first, presumably because it was most likely to carry.[39] The resulting ballot was thirty-five voting "guilty" and nineteen voting "not guilty," one vote short of the two-thirds majority needed to convict. The court was then adjourned until 26 May, at which time votes were taken on articles two and three with the same results. The Senate then adjourned without voting on the other articles and Chief Justice Chase announced that the president had been acquitted.[40] All the Democrats had supported Johnson along with seven Republicans. Those seven senators who voted for Johnson were ostracized by the Republicans, relegated to private life at the expiration of their terms, and became the victims of verbal and written abuse.[41]

There was a showdown in the Republican press over support for the acquittal-minded Republican senators. Although many of the papers printed vicious tirades against them, a good

---

[38]Ibid., p. 382.

[39]Trefousse, Impeachment, pp. 165-66.

[40]Senate, Globe, 40th Cong., 2nd sess., 16 May 1868, pp. 411, 414, 415.

[41]Henderson, "Emancipation," pp. 207-08.

number came to their defense.[42] The New York Times supported the seven senators, reporting that they

> have given us new reason for believing in Republican institutions, and new ground for faith in human virtue . . . . When the heat of party passion has passed away, sober and reflecting men will wonder how they could have been betrayed into such a violation of common sense and common decency.[43]

The closeness of the balloting in Johnson's trial is deceiving because there were other senators prepared to vote for acquittal if their votes were needed.[44] There are several explanations for the failure of this impeachment. First, the case against Johnson was weak. It was evident that Johnson had not planned any conspiracy to break a law which was constitutionally questionable anyway. Another stumbling block was ultra-radical Ben Wade of Ohio, president pro-tempore of the Senate, who would become president of the United States upon Johnson's removal and then possibly get the party's nomination in that year. Johnson had only one more year to serve, and conservative Republicans were supporting General Ulysses S. Grant for nomination, since they felt confident they could control him. Another reason for failure was the constitutional issue--that the division of government powers would be destroyed

---

[42]Ralph J. Roske, "Republican Newspaper Support For the Acquittal of President Johnson," Tennessee Historical Quarterly 11(1952):264.

[43]New York Times, 18 May 1868.

[44]Trefousse, Impeachment, p. 169.

if this impeachment were successful. Finally, by 1868, the political importance of the trial to the Republicans had somewhat lessened.[45]

Many of the senators filed written opinions after the trial.[46] Senator Lyman Trumbull of Illinois, one of the seven Republicans voting for acquittal, expressed possibly the major reason for the impeachment failure.

> Once set the example of impeaching a President for what, when the excitement of the hour shall have subsided, will be regarded as insufficient causes . . . and no future President will be safe who happens to differ with a majority of the House and two-thirds of the Senate on any measure deemed by them important, particularly if of a political character.[47]

Thaddeus Stevens, one of the impeachment managers, deeply angered and disappointed at the results, introduced new articles of impeachment saying,

> Instead of alleging that impeachment can only be instituted where there is an indictable offense, I contend that the great object of impeachment was to punish malfeasance in office--where there was no actual crime committed--no malfeasance against which an indictment would hold, and against which no allegation of evil intention need be made . . . in short, that they could be had mainly for political offenses.[48]

---

[45]Ibid., pp. 175-79.

[46]Johnson, Trial, 3:3-353.

[47]Ibid., p. 328.

[48]House, Globe, 40th Cong., 2nd sess., 7 July 1868, pp. 3786-787.

Bitter at the outcome and difficulty of removing a president, he prophesied that, "I have come to the fixed conclusion that neither in Europe nor America will the Chief Executive of a nation be again removed by peaceful means."[49]

In reviewing events, Representative James G. Blaine later admitted that impeachment was not justified on the charges made, and if successful would have caused more damage to the nation than Johnson could have inflicted. In short, he "was impeached for one series of misdemeanors, and tried for another series."[50]

Historians have expressed the belief that if impeachment had been successful, the American government could have evolved into a parliamentary system, owing to the congressional supremacy that was supposedly being established. In reality, the struggle between the executive and legislative branches had caused the president to exercise supreme powers and presidential authority only recently established, and thus, Congress used impeachment as a defensive weapon against Johnson. Owing to its failure, the result is that a president who ignores the will of Congress or exceeds his powers can only effectively be removed by the voters at the polls.[51] More recently it has been demonstrated that a threatened impeachment can cause a president to resign, as in the case of Richard M. Nixon in 1974.

---

[49]Ibid., p. 3790.

[50]Blaine, Twenty Years, 2:376.

[51]Benedict, Impeachment, p. 180.

A thorough analysis of the historical background of impeachment and the three controversial trials of Pickering, Chase and Johnson reveals that some constitutional change of impeachment is desirable in order to prevent public abuse by corrupt or unfit officials who are the targets of political schemes. If this is to be accomplished, then the questions of whether an impeachable offense includes indictable and non-indictable behavior; whether it includes official and nonofficial misconduct; and, whether or not the constitutional framers intended some additional standard or method of removing judges must be answered. An impeachable offense must be more specifically defined, and this definition should be incorporated into the Constitution.

A study of the authorities on impeachment reveals that although there are many definitions of impeachable offenses, there are two basic theories of impeachment. Judicial theory advocates that impeachment should be governed entirely by law accompanied by a regular trial. The offenses must be defined by law, and the proceedings are governed by the rules of law. This idea was advanced by the defense in both the Chase and Johnson trials and is generally supported by the defense in most impeachment cases, including the recent impeachment attempt on President Nixon. Political theory maintains that it is unnecessary for offenses to be specifically defined by law in the Constitution or in any statute. Those charging and trying may convict for anything they believe gives evidence of unfitness

for holding office or for any moral transgressions, whether connected with official conduct or not. The proceedings are nonjudicial and confined to no standard.[52] This theory is generally supported by the impeachment managers in most cases for obvious reasons. The managers in the Johnson trial summed up their version of the political theory as follows:

> We define, therefore, an impeachable high crime or misdemeanor to be one in its nature or consequences subversive of some fundamental or essential principle of government, or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or without violating a positive law, by the abuse of discretionary powers from improper motives, or for any improper purpose.[53]

Later definitions of impeachable offenses include a broad statement made in 1970 by then Representative Gerald R. Ford in proposing the impeachment of Supreme Court Justice William O. Douglas,

> . . . an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history; conviction results from whatever offense or offenses two-thirds of the other body considers to be sufficiently serious to require removal of the accused from office.[54]

---

[52]George H. Ethridge, "The Law of Impeachment," Mississippi Law Journal 8(1936):283.

[53]Johnson, Trial, 1:88.

[54]U.S., Congress, House, Congressional Record, 91st Cong., 2nd sess., 15 April 1970, p. 11913.

More generally accepted is Joseph Story's 1833 definition in his Commentaries on the Constitution. He says that although an impeachment may include crimes of a legal character, it has a more enlarged scope and reaches political offenses resulting from personal misconduct, gross neglect, usurption of power, and habitual disregard of public interests in carrying out the duties of political office. These political offenses are so various and indefinable that it is impossible to list them in the positive law.[55]

Numerous authorities on impeachable offenses could be quoted, but most definitions are similar. The significance is that the overwhelming majority of writers agree that impeachment is not limited to criminal offenses, as is evidenced by the bibliography of Charles Black's Impeachment: A Handbook.[56] This view is formulated and supported by historical studies and precedents from the earliest American impeachments to date. Most authorities base their conclusion on the inclusion of the word "misdemeanors" in "high crimes and misdemeanors" from the constitutional definition of impeachment. The argument declares that the word implies non-criminal offenses, since criminal misdemeanors are embraced in the word "crimes." Therefore, "misdemeanors" could be discarded as useless, except that this is

---

[55]Joseph Story, Commentaries on the Constitution of the United States, 3 vols. (1833; reprint ed., New York: Da Capo Press, 1970), 2:233-34.

[56]Charles L. Black, Impeachment: A Handbook (New Haven and London: Yale University Press, 1974), pp. 71-75.

forbidden by the established principle that no word in the Constitution is superfluous.[57] Another argument points out that indictable offenses can be tried by ordinary courts, therefore impeachment extends to cases in which those courts have no jurisdiction. Officers could abuse their powers to the detriment of the community and yet not be guilty of any indictable behavior; thus, impeachment is the only remedy.[58]

The extreme theory of impeachable offenses advanced by the managers in the Chase trial, which would have made impeachment a political weapon, was put to rest for half a century by Chase's acquittal. In 1868 the Johnson impeachment attempted to revive the theory. The articles against him charged no indictable offense, but his acquittal definitively rejected the broad view of impeachable offenses, as far as the executive is concerned.[59] Since the Johnson trial, the broader view which Hamilton and Madison previously endorsed has prevailed in cases involving federal judges. In 1913 Judge Robert Archbald and in 1936 Judge Halsted Ritter were impeached and removed for non-indictable offenses.[60] It was shown in both cases that the

---

[57]Alexander Simpson, "Federal Impeachments," University of Pennsylvania Law Review 64(1916):678-79.

[58]William Lawrence, "Law of Impeachment," American Law Register 6(1871):647-48.

[59]Bernard Schwartz, A Commentary on the Constitution of the United States, 2 vols. (New York: The Macmillan Co., 1963), 1:114.

[60]U.S., Congress, Senate, Senate Document Number 39, 88th Cong., 1st sess., 1964, p. 558.

judges acted in a manner which cast doubts on their integrity, even though their actions did not constitute crimes. Thus a judge can be impeached and removed if his offenses, though non-indictable, abuse his judicial authority. This broader interpretation of impeachable offenses as applied to judges is explained by their unique tenure during "good behavior." Impeachment is the only means of removing judges unfit for office and is the only method for determining if their behavior has been "good."[61]

Each of the thirteen American impeachments have involved charges of misconduct incompatible with the official position of the office. The conduct includes exceeding constitutional boundaries of the office's powers, thereby infringing on the powers of another branch of government; behavior grossly incompatible with the proper function of the office; and using the power of the office for personal gain or improper purposes. The House of Representatives has evidently de-emphasized criminal conduct in writing impeachment articles since less than one-third of the eighty-three articles adopted have expressly charged a violation of criminal statutes. Most of the articles' allegations imply that the officer violated his duties, his oath, or undermined public confidence in his ability to perform his official functions.[62]

---

[61]Schwartz, Commentary, 1:114-15.

[62]U.S., Congress, House, Committee on the Judiciary, Constitutional Grounds for Presidential Impeachment, 93d Cong., 2nd sess., 1974, pp. 17-18, 21.

No matter which interpretation of impeachable offenses is accepted, partisanship will inevitably play a role in impeachment proceedings. Even in the most recent impeachment attempt, a member of the House Judiciary Committee, William L. Hungate of Missouri (Democrat), remarked that "There are some Democrats on the committee who would vote to impeach Nixon today. And there are a few Republicans who wouldn't vote to impeach Nixon if he were caught in a bank vault at midnight."[63] Some authorities fear that the broad definition of impeachable offenses will put officials at the mercy of a temporary majority in Congress, and thus they argue that the constitutional definition must be narrowly construed. Another authority points out that no matter which definition is used, the officers are at the mercy of Congress, and if some of our impeachments have been decided by partisan votes, it is an indictment of the whole system and not just that part.[64] While the potential for abuse of the impeachment power may exist in any standard which permits impeachments for non-indictable crimes, this must be weighed against the potential danger to the nation arising from the abuse of an official's position.[65] Thus, the American experience

---

[63]Diamond, Impeachment, p. 16.

[64]Simpson, "Impeachments," p. 695.

[65]John D. Feerick, "Impeaching Federal Judges: A Study of the Constitutional Provisions," Fordham Law Review 39(1970): 56.

with impeachment reflects the idea that impeachable conduct does not have to be criminal.[66]

Fewer authorities have expressed opinions on the impeachment of officials for nonofficial misconduct than on impeachable offenses. One writer believes that "Impeachment power should exclude misconduct by the respondent in his private capacity which involves neither the conduct of his official duties, an abuse of his official position, nor a violation of criminal or civil law."[67] In 1905 the impeachment of Judge Charles Swayne for misconduct off the bench resulted in acquittal which set a precedent that nonofficial misconduct is not included in impeachable offenses. The acquittal caused one senator to introduce a resolution calling for a constitutional amendment making officers removable by address so that the judge could be dismissed by that method.[68]

Another assertion that some authorities have made is that resignation does not give a federal officer immunity from impeachment for acts committed while in office. In 1876 the Senate decided that it was not deprived of jurisdiction to try an officer if he resigned in anticipation of impeachment. Although the trial may not occur, since the official has vacated

---

[66]House, Constitutional Grounds, pp. 23-24.

[67]Paul S. Fenton, "The Scope of the Impeachment Power," Northwestern University Law Review 65(1970):745.

[68]Hannis Taylor, "The American Law of Impeachment, North American Review 180(1905):512.

his office, the Senate reserves the right to hold the trial since judgment may involve not only removal but also disqualification from further office. Even though the offender has relinquished his office, it may be in the public interest to have him disqualified from future positions.[69]

A final question to be answered is whether or not the constitutional framers intended some additional standard or method for removing judges. Some authorities contend that the impeachment clause in Article 2 was a limitation on the powers of Congress to remove judges, and Article 3 was a limitation on the executive power of removal. However, there is no constitutional limitation on the power of Congress to define "good behavior" in Article 3 and provide a method whereby the judiciary could try the fitness of its own members. The executive and judiciary are deprived of the power of removing judges, and the legislature is limited to impeachment. The judiciary, however, is not prohibited from determining the fitness of judges.[70] In view of the number of judges whose conduct has been the subject of congressional impeachment inquiry, it is evident that some other method of removal is desirable. Of the fifty-five judges investigated, eight were impeached, eight censured, seventeen resigned at some stage of the investigation, and twenty-two were absolved. There is an undetermined number

---

[69]Schwartz, Commentary, 1:113.

[70]Preble Stolz, "Disciplining Federal Judges: Is Impeachment Hopeless?" California Law Review 57(1969):661.

who have resigned under mere threat of inquiry.[71] Most authorities advocate some kind of judicial reform that would proceed mainly against judges who are inept because of illness, insanity, age or disabilities for which impeachment is inadequate.[72] Suggestions call for a judicial qualifications board, free of political, partisan and personal influences, or advocate, supervision by the Supreme Court, either of which method would probably require a constitutional amendment.[73] Provision has been made for incapacitated presidents, and now it is desirable that this be done for judges as well.

Based on the history of impeachments in the United States and the precedents established by those cases, it can be concluded that American impeachment includes a broad definition of "high crimes and misdemeanors" but not to the inclusion of impeachment as a political weapon. Impeachable offenses do not include misconduct outside the official duties. The Constitution should be amended to include this interpretation of "high crimes and misdemeanors" and impeachable offenses and to provide for an alternative method for removing disabled judges, who are appointed for life, without disturbing the independency of the judiciary. With these changes, recommended by most

---

[71]Joseph Borkin, The Corrupt Judge: An Inquiry into Bribery and other High Crimes and Misdemeanors in the Federal Courts (New York: Clarkson N. Potter, Inc., 1862), p. 204.

[72]Stolz, "Disciplining," p. 665.

[73]Potts, "Impeachment," p. 38; Borkin, Corrupt Judges, pp. 207-10.

authorities, corrupt judges, officeholders and chief executives will not remain in power, and impeachment as a political weapon will be rendered invalid.

APPENDIX I

THE CONSTITUTION ON IMPEACHMENT

Article, Section Clause	Text
Art. 1, Sec. 2, Cl. 5 . . .	The House of Representatives shall . . . have the sole Power of Impeachment.
Art. 1, Sec. 3, Cl. 6 . . .	The Senate shall have the sole Power to try 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.
Art. 1, Sec. 3, Cl. 7 . . .	Judgment in Cases of Imeapchment 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.
Art. 2, Sec. 2, Cl. 1 . . .	The President shall . . . have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.
Art. 2, Sec. 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.
Art. 3, Sec. 1	The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior . . . .

Article, Section, Clause	Text
Art. 3, Sec. 2, Cl. 3 . . .	The trial of all Crimes, except in Cases of Impeachment, shall be by Jury . . . .

APPENDIX II

IMPEACHMENTS IN AMERICAN HISTORY[1]

Date	Name[2]	Position
1797-99	William Blount	Senator
1803-04	John Pickering	Federal Judge
1804-05	Samuel Chase	Supreme Court Justice
1830-31	James Peck	Federal Judge
1862	West Humphreys	Federal Judge
1867-68	Andrew Johnson	President
1873	Mark Delahay	Federal Judge
1876	William W. Belknap	Secretary of War

[1]Sources: Robert A. Diamond, ed., Impeachment and the U.S. Congress (Washington, D.C.: Congressional Quarterly, 1974), pp. 8-9, 11; Paul S. Fenton, "The Scope of Impeachment Power," Northwestern University Law Review 65(1970):757-58; Alexander Simpson, "Federal Impeachments," University of Pennsylvania Law Review 64(1916):686-88.

APPENDIX II--Continued

Type of Charges	Decision
Criminal Offenses	Senate Dismissed Impeachment Proceedings After He was Expelled from Senate
Official Misconduct	Convicted and Removed
Official Misconduct	Acquitted
Official Misconduct	Acquitted
Treason, Criminal Offenses and Official Misconduct	Convicted and Removed
Official Misconduct and Constitutionally Questionable Criminal Offenses	Acquitted
Official Misconduct	Resigned Before Impeachment Articles Prepared
Bribery and Official Misconduct	Acquitted

[2]This list does not include attempted or proposed impeachments, but only those cases on which the House actually voted to impeach the officer, whether by voice or roll call vote. For a partial list of attempted or proposed impeachments which have failed to come to a vote in the House, see Impeachment and the U.S. Congress, pp. 1, 7; Impeachment: Selected Materials on Procedure, U.S. Congress, House of Representatives, House Committee on the Judiciary, 93d Cong., 2nd sess., January, 1974, p. 851.

APPENDIX II--Continued

Date	Name	Position
1903-05	Charles Swayne	Federal Judge
1912-13	Robert Archbald	Circuit Judge U.S. Commerce Court
1925-26	George English	Federal Judge
1932-33	Harold Louderback	Federal Judge
1933-36	Halsted Ritter	Federal Judge

APPENDIX II--Continued

Type of Charges	Decision
Criminal Offenses and Official Misconduct	Acquitted
Official Misconduct	Convicted and Removed
Official Misconduct	Resigned therefore Charges Were Dismissed
Criminal Offenses and Official Misconduct	Acquitted
Criminal Offenses and Official Misconduct	Convicted and Removed

APPENDIX III

IMPEACHMENT ARTICLES AGAINST JUDGE JOHN PICKERING

Article 1. That whereas George Wentworth, surveyor of the district of New Hampshire, did, in the port of Portsmouth, in the said district, on waters that are navigable from the sea by vessels of more than ten tons burden, on the fifteenth day of October, in the year one thousand eight hundred and two, seize the ship called the Eliza, of about two hundred and eighty-five tons burden, whereof William Ladd was late master, together with her furniture, tackle, and apparel, alleging that there had been unladen from on board of said ship, contrary to law, sundry goods, wares, and merchandise, of foreign growth and manufacture, of the value of four hundred dollars and upwards, and did likewise seize on land within the said district, on the seventh day of October, in the year one thousand eight hundred and two, two cables of the value of two hundred and fifty dollars, part of the said goods which were alleged to have been unladen from on board the said ship as aforesaid, contrary to law; and whereas Thomas Chadbourne, a deputy marshal of the said district of New Hampshire, did, on the sixteenth day of October, in the year one thousand eight hundred and two, by virtue of an order of the said John Pickering, judge of the district court, of the said district of New Hampshire, arrest

and detain in custody, for trial, before the said John Pickering, judge of the said district court, the said ship called the Eliza, with her furniture, tackle, and apparel, and also the two cables aforesaid; and whereas, by an act of Congress, passed on the second day of March, in the year one thousand seven hundred and eighty-nine, it is among other things provided, that "upon the prayer of any claimant to the court, that any ship or vessel, goods, wares, or merchandise, so seized and prosecuted, or any part thereof, should be delivered to such claimant, it shall be lawful for the court to appoint three proper persons to appraise such ship or vessel, goods, wares, or merchandise, who shall be sworn in open court for the faithful discharge of their duty; and such appraisement shall be made at the expense of the party on whose prayer it is granted; and on the return of such appraisement, if the claimant shall, with one or more sureties, to be approved of by the court, execute a bond in the usual form to the United States, for the payment of a sum equal to the sum of which the ship or vessel, goods, wares, or merchandise, so prayed to be delivered and appraised and moreover produce a certificate from the collector of the district wherein such trial is had, and of the naval officer thereof, if any there be, that the duties on the goods, wares, and merchandise, or tonnage duty on the ship or vessel, so claimed, have been paid or secured, in like manner as if the goods, wares, or merchandise, ship or vessel, had been legally entered, the court shall, by rule, order such ship or vessel, goods, wares, or merchandise, to be

delivered to the said claimant;" Yet the said John Pickering, judge of the said district court, of the said district of New Hampshire, the said act of Congress not regarding but, with intent to evade the same, did order the said ship called the Eliza, with her furniture, tackle, and apparel, and the said two cables, to be delivered to a certain Eliphalet Ladd, who claimed the same, without his, the said Eliphalet Ladd's producing any certificate from the collector and naval officer of the said district, that the tonnage duty on the said ship, or the duties on the said cables, had been paid or secured, contrary to his trust and duty as judge of the said district court, against the laws of the United States, and to the manifest injury of their revenue.

Article 2. That whereas, at a special district court of the United States, begun and held at Portsmouth, on the eleventh day of November, in the year one thousand eight hundred and two, by John Pickering, judge of the said court, the United States, by Joseph Whipple, their collector of said district, having libelled, propounded, and given the said judge to understand and be informed, that the said ship Eliza, with her furniture, tackle, and apparel, had been seized as aforesaid, because there had been unladen therefrom, contrary to law, two cables and one hundred pieces of check, of the value of four hundred dollars and upwards, and having prayed in their said libel that the said ship, with her furniture, tackle and apparel, might, by the said court, be adjudged to be forfeited to the United States,

and be disposed of according to law, and a certain Eliphalet Ladd, by his proctor and attorney, having come into the said court, and having claimed the said ship Eliza, with her tackle, furniture, and apparel, and having denied that the said two cables, and the said one hundred pieces of check had been unladen from the said ship contrary to law, and having prayed the said court that the said ship, with her furniture, tackle, and apparel, might be restored to him, the said Eliphalet Ladd, the said John Pickering, judge of the said district court, did proceed to the hearing and trial of the cause, thus depending [sic] between the United States on the one part, claiming the said ship Eliza, with her furniture, tackle, and apparel, as forfeited by law, and the said Eliphalet Ladd on the other part, claiming the said ship Eliza, with her furniture, tackle, and apparel, in his own proper right; and whereas John S. Sherburne, Attorney for the United States, in and for the said district of New Hampshire, did appear in the said district court, as his special duty it was by law, to prosecute the said cause in behalf of the United States, and did produce sundry witnesses to prove the facts charged by the United States in the libel, filled [sic] by the collector as aforesaid in the said court, and to show that the said ship Eliza, with her tackle, furniture, and apparel, was justly forfeited to the United States, and did pray the said court that the said witnesses might be sworn in behalf of the United States; yet the said John Pickering, being then judge of the said district court, and then

in court sitting, with intent to defeat the just claims of the United States, did refuse to hear the testimony of the said witnesses so as aforesaid, produced in behalf of the United States, and without hearing the said testimony so adduced in behalf of the United States, in the trial of the said cause, did order and decree the said ship Eliza, with her furniture, tackle, and apparel, to be restored to the said Eliphalet Ladd, the claimant, contrary to his trust and duty, as judge of the said district court, in violation of the laws of the United States, and to the manifest injury of their revenue.

Article 3. That whereas it is provided by an act of Congress, passed on the twenty-fourth day of September, in the year one thousand seven hundred and eighty-nine, "that from all final decrees in a district court, in cases of admiralty and maritime jurisdiction, where the matter in dispute exceeds the sum or value of three hundred dollars, exclusive of costs, an appeal shall be allowed to the next circuit court, to be held in such district;" and whereas, on the twelfth day of November, in the year one thousand eight hundred and two, at the trial of the aforesaid cause, between the United States on the one part, claiming the said ship Eliza, with her furniture, tackle, and apparel, as forfeited for the causes aforesaid, and the said Eliphalet Ladd on the other part, claiming the said ship Eliza, with her furniture, tackle, and apparel, in his own proper right, the said John Pickering, judge of the said district of New Hampshire, did decree that the said ship Eliza, with her tackle,

furniture, and apparel, should be restored to the said Eliphalet Ladd, the claimant; and whereas the said John S. Sherburne, attorney for the United States, in and for the said district of New Hampshire, and prosecuting the said cause for and on the part of the United States, on the said twelfth day of November, in the year one thousand eight hundred and two, did, in the name and behalf of the United States, claim an appeal from the said decree of the district court, to the next circuit court, to be held in the said district of New Hampshire, and did pray the said district court to allow the said appeal, in conformity to the provisions of the act of Congress last aforesaid; yet the said John Pickering, judge of the said district court, disregarding the authority of the laws and wickedly meaning and intending to injure the revenues of the United States, and thereby to impair their public credit, did absolutely and positively refuse to allow the said appeal, as prayed for and claimed by the said John S. Sherburne, in behalf of the United States, contrary to his trust and duty as judge of the said district court, against the laws of the United States, to the great injury of the public revenue, and in violation of the solemn oath which he had taken to administer equal and impartial justice.

Article 4. 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, on the eleventh and twelfth days of November, in the year one thousand eight hundred and two, being then judge of the district court, in and for the district of New Hampshire, did appear upon the bench of the said court, for the purpose of administering justice, in a state of total intoxication, produced by the free and intemperate use of inebriating liquors; 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 the good citizens of the United States, and was then and there guilty of other high misdemeanors, disgraceful of his own character as a judge and degrading to the honor and dignity of the United States.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles, or other accusation or impeachment, against the said John Pickering, and also of replying to his answers which he shall make to the said articles, or any of them, and of offering proof to all and every other articles, impeachment, or accusation, which shall be exhibited by them, as the case shall require, do demand that the said John Pickering may be put to answer the said high crimes and misdemeanors, and that such proceedings, trials, and judgments may be thereupon had and given, as may be agreeable to law and justice.[1]

---

[1]U.S., Congress, Senate, Annals of Congress, 8th Cong., 1st sess., 4 January 1804, pp. 319-22.

APPENDIX IV

IMPEACHMENT ARTICLES AGAINST JUSTICE SAMUEL CHASE

Article 1. That, unmindful, of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them "faithfully and impartially, and without respect to persons," the said Samuel Chase, on the trial of John Fries, charged with treason, before the circuit court of the United States, held for the district of Pennsylvania, in the city of Philadelphia, during the months of April and May, one thousand eight hundred, whereat the said Samuel Chase presided, did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust, viz.

1. In delivering an opinion, in writing, on the question of law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his defence:

2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions, upon which they intended to rest the defence of their client:

3. In debarring the prisoner from his constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt, or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give:

In consequence of which irregular conduct of the said Samuel Chase, as dangerous to our liberties, as it is novel to our laws and usages, the said John Fries was deprived of the right, secured to him by the eighth article amendatory of the constitution, and was condemned to death without having been heard by counsel, in his defence, to the disgrace of the character of the American bench, in manifest violation of law and justice, and in open contempt of the rights of juries, on which, ultimately, rest the liberty and safety of the American people.

Article 2. That prompted by a similar spirit of persecution and injustice, at a circuit court of the United States, held at Richmond, in the month of May, one thousand eight hundred, for the district of Virginia, whereat the said Samuel Chase presided, and before which a certain James Thompson Callender was arraigned for a libel on John Adams, then President of the United States, the said Samuel Chase, with intent to oppress, and procure the conviction of, the said Callender, did over-rule the objection of John Basset, one of the jury, who wished to be excused from serving on the said trial,

because he had made up his mind, as to the publication from which the words, charged to be libelous, in the indictment, were extracted; and the said Basset was accordingly sworn and did serve on the said jury, by whose verdict the prisoner was subsequently convicted.

Article 3. That, with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in, on pretence that the said witness could not prove the truth of the said charge embraced more than one fact.

Article 4. That the conduct of the said Samuel Chase, was marked, during the whole course of the said trial, by manifest injustice, partiality, and intemperance; viz.

1. In compelling the prisoner's counsel to reduce to writing, and submit to the inspection of the court, for their admission, or rejection, all questions which the said counsel meant to propound to the above named John Taylor, the witness.

2. In refusing to postpone the trial, although an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused; and although it was manifest, that, with the utmost diligence, the attendance of such witnesses could not have been procured at that term.

3. In the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel; and in falsely insinuating that they wished to excite the public fears

and indignation, and to produce that insubordination to law, to which the conduct of the judge did, at the same time, manifestly tend:

4. In repeated and vexatious interruptions of the said counsel, on the part of the said judge, which, at length, induced them to abandon their cause and their client, who was thereupon convicted and condemned to fine and imprisonment:

5. In an indecent solicitude, manifested by the said Samuel Chase, for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge as it was subversive of justice.

Article 5. And whereas it is provided by the act of Congress, passed on the 24th day of September, 1789, intituled "An act to establish the judicial courts of the United States," that for any crime, or offence, against the United States, the offender may be arrested in the state where such offender may be found: and whereas, it is provided by the laws of Virginia, that, upon presentment by any grand jury of an offence not capital, the court shall order the clerk to issue a summons against the person, or persons offending, to appear and answer such presentment at the next court; yet, the said Samuel Chase did, at the court aforesaid, award a capias against the body of the said James Thompson Callender, indicted for an offence not capital, whereupon the said Callender was arrested and committed to close custody, contrary to law in that case made and provided.

Article 6. And whereas it is provided by the 34th section of the aforesaid act, intituled "An act to establish the judicial courts of the United States," that the laws of the several states, except where the constitution, treaties, or statutes of the United States shall otherwise require, or provide, shall be regarded as the rules of decision in trials at common law, in the courts of the United States, in cases where they apply: and whereas, by the laws of Virginia it is provided, that in cases not capital, the offender shall not be held to answer any presentment of a grand jury until the court next succeeding that during which such presentment shall have been made, yet the said Samuel Chase, with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial, during the term at which he, the said Callender, was presented and indicted, contrary to law in that case made and provided.

Article 7. That, at a circuit court of the United States, for the district of Delaware, held at Newcastle, in the month of June, one thousand eight hundred, whereat the said Samuel Chase presided, the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge and stoop to the level of an informer, by refusing to discharge the grand jury, although entreated by several of the said jury so to do; and after the said grand jury had regularly declared, through their foreman, that they had found no bills of indictment,

nor had any presentments to make, by observing to the said grand jury, that he, the said Samuel Chase, understood "that a highly seditious temper had manifested itself in the state of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order . . . that the name of this printer was [_____]," but checking himself, as if sensible of the indecorum which he was committing, added, "that it might be assuming too much to mention the name of this person, but it becomes your duty, gentlemen, to enquire diligently into this matter . . . ," or words to that effect: and that with intention to procure the prosecution of the printer in question, the said Samuel Chase did, moreover, authoritatively enjoin on the district attorney of the United States the necessity of procuring a file of the papers to which he alluded, (and which were understood to be those published under the title of "Mirror of the Times and General Advertiser,") and, by a strict examination of them, to find some passage which might furnish the ground-work of a prosecution against the printer of the said paper: thereby degrading his high judicial functions, and tending to impair the public confidence in, and respect for, the tribunals of justice, so essential to the general welfare.

Article 8. And whereas mutual respect and confidence between the government of the United States and those of the

individual states, and between the people and those governments, respectively, are highly conducive to that public harmony, without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court, for the district of Maryland, held at Baltimore, in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland against their state government, and constitution, a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the supreme court of the United States: and moreover, that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the government of the United States, by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion and in a proper manner, were at that time and as delivered by him, highly indecent, extra-judicial, and tending to prostitute the high judicial character with which he was invested, to the low purpose of an electioneering partizan [sic].[1]

---

[1]Samuel Chase, Trial of Samuel Chase, 2 vols. (1805; reprint ed., New York: Da Capo Press, 1970), 1:5-8.

BIBLIOGRAPHY

PRIMARY SOURCES

Writings, Autobiographies and Contemporary Accounts

Adams, John Quincy. Writings of John Quincy Adams. Edited by Worthington C. Ford. 7 vols. New York: The Macmillan Co., 1914.

"The American Constitution and Impeachment of the President." Blackwood's Edinburgh Magazine. 66, Am. ed. (1868): 707-27.

Clemenceau, Georges. American Reconstruction 1865-1870 and the Impeachment of President Johnson. Edited by Fernand Baldensperger. 1928. Reprint. New York: Da Capo Press, 1969.

Dwight, Theodore W. "Trial by Impeachment." American Law Register 6(1867):257-83.

Elliot, Jonathan. The Debates in the Several State Conventions on the Adoption of the Federal Constitution. 5 vols. 1888. Reprint. New York: Burt Franklin, 1968?

Ellis, C. M. "The Causes For Which A President Can Be Impeached." Atlantic Monthly 19(1867):88-92.

Ferrand, Max, ed. The Records of the Federal Convention of 1787. Rev. ed. 4 vols. New Haven, Conn.: Yale University Press, 1937.

Fessenden, Francis. Life and Public Services of William Pitt Fessenden. 2 vols. 1907. Reprint. New York: Da Capo Press, 1970.

Hamilton, Alexander; Jay, John; and Madison, James. The Federalist. Edited by Jacob E. Cooke. Middletown, Conn.: Wesleyan Univ. Press, 1961.

Jefferson, Thomas. The Jefferson Cyclopedia: A Comprehensive Collection of the Views of Thomas Jefferson. Edited by John P. Foley. New York: Funk and Wagnalls Co., 1900.

_____. The Life and Selected Writings of Thomas Jefferson. Edited by Adrienne Koch and William Peden. New York: The Modern Library, 1944.

_____. The Works of Thomas Jefferson. Edited by Paul Leicester Ford. 12 vols. New York: G. P. Putnam's Sons, 1904-05.

_____. The Writings of Thomas Jefferson. Edited by Andrew A. Lipscomb and Albert E. Bergh. 20 vols. Washington, D.C.: The Thomas Jefferson Memorial Association, 1904-05.

Lawrence, William. "Law of Impeachment." American Law Register. 6(1871):641-80.

Madison, James. Notes of Debate in the Federal Convention of 1787. 1840. Reprint. Athens, Ohio: Ohio University Press, 1966.

_____. The Papers of James Madison. Edited by Henry D. Gilpin. 3 vols. Mobile: Allston Mygatt, 1842.

_____. The Writings of James Madison. Edited by Gaillard Hunt. 9 vols. New York: G. P. Putnam's Sons, 1900-10.

Plumer, William, Jr. Life of William Plumer. Boston: Phillips, Sampson and Co., 1857.

Ross, Edmund G. History of the Impeachment of Andrew Johnson President of the United States. Santa Fe: New Mexican Printing Co., 1896.

Sherman, John. Recollections of Forty Years in the House, Senate and Cabinet, An Autobiography. 2 vols. Chicago: The Werner Co., 1895.

Tucker, St. George. Blackstone's Commentaries: With Notes of Reference, to the Constitution and Laws, of the Federal Government of the United States; and of the Commonwealth of Virginia. 5 vols. 1803. Reprint. New York: Augustus M. Kelley, 1969.

Wilson, James. The Works of James Wilson. Edited by James DeWitt Andrews. 2 vols. Chicago: Callaghan and Co., 1896.

Memoirs and Correspondence

Adams, John Quincy. Memoirs of John Quincy Adams. Edited by Charles Francis Adams. 12 vols. 1874-77. Reprint. Freeport, New York: Books for Libraries Press, 1969.

Blaine, James G. Twenty Years of Congress From Lincoln to Garfield. 2 vols. Norwich, Conn.: Henry Hill Publishing Co., 1886.

Boston. Massachusetts Historical Society. Timothy Pickering papers. On microfilm, North Texas State University.

Boutwell, George S. Reminiscences of Sixty Years in Public Affairs. 2 vols. 1902. Reprint. New York: Greenwood Press, 1968.

Browning, Orville Hickman. The Diary of Orville Hickman Browning. Edited by James G. Randall. 2 vols. Collections of the Illinois State Historical Library, vols. 21 and 22. Lincoln, Series, vols. 2 and 3. Springfield: Illinois State Historical Library, 1933.

Cullom, Shelby M. Fifty Years of Public Service: Personal Recollections of Shelby M. Cullom. 1911. Reprint. New York: Da Capo Press, 1969.

Curtis, Benjamin Robbins. A Memoir of Benjamin Robbins Curtis, LL.D. with Some of His Professional and Miscellaneous Writings. Edited by his son, Benjamin R. Curtis. 2 vols. Boston: Little, Brown and Co., 1879.

Jefferson, Thomas. Jefferson's Letters. Arranged by Willson Whitman. Eau Claire, Wisc.: E. M. Hale and Co., 194-?

Marshall, John. My Dearest Polly: Letters of Chief Justice John Marshall to His Wife, with Their Background, Political and Domestic. Edited by Frances Norton Mason. Richmond, Va.: Garrett and Massie Inc., 1961.

Poore, Ben: Perley. Perley's Reminiscences of Sixty Years in the National Metropolis. 2 vols. Philadelphia: Hubbard Brothers, Publishers, 1886.

Sumner, Charles. The Works of Charles Sumner. 15 vols. Boston: Lee and Shepard, 1870-83.

Welles, Gideon. Diary of Gideon Welles: Secretary of the Navy Lincoln and Johnson. Edited by Howard K. Beale. 3 vols. New York: W. W. Norton and Co., 1960.

Government Documents

Attorneys for the President. An Analysis of the Constitutional Standard for Presidential Impeachment. Washington, D.C.: Government Printing Office, 1974.

Chase, Samuel. Trial of Samuel Chase, An Associate Justice of the Supreme Court of the United States, Impeached by the House of Representatives for High Crimes and Misdemeanors, Before the Senate of the United States. 2 vols. 1805. Reprint. New York: Da Capo Press, 1970.

Johnson, Andrew. Trial of Andrew Johnson, President of the United States, Before the Senate of the United States, on Impeachment by the House of Representatives for High Crimes and Misdemeanors. 3 vols. Washington, D.C.: Government Printing Office, 1868.

Marbury v. Madison. 5 U.S. 137 (1803).

Richardson, James D., ed. A Compilation of the Messages and Papers of the Presidents 1789-1897. 10 vols. Washington, D.C.: Government Printing Office, 1896-99.

U.S. Congress. Annals of Congress. 1st Cong., 1789-91, 7th-8th Congs., 1802-05.

_____. Congressional Globe. 39th-40th Congs., 1866-68.

_____. Congressional Record. 91st Cong., 1969-71.

U.S. Congress. House Committee on the Judiciary. Constitutional Grounds for Presidential Impeachment. 93d Cong., 2nd sess., 1974. On microfiche, North Texas State University.

_____. Impeachment: Selected Materials. 93d Cong., 1st sess. Washington, D.C.: Government Printing Office, 1973.

_____. Impeachment: Selected Materials on Procedure. 93d Cong., 2nd sess. Washington, D.C.: Government Printing Office, 1974.

U.S. Congress Senate. Senate Document No. 39. 88th Cong., 1st sess., 1964.

_____. Senate Document No. 876. 62nd Cong., 2nd sess., 1911-12. On microprint, North Texas State University.

U.S. Statutes at Large. Vol. 2, 1793-1813. Vol. 14, 1865-67.

Periodicals

Charleston Courier, 1803.

Chicago Tribune, 1866 and 1868.

Colombian Centinel and Massachusetts Federalist, 1804.

Harper's Weekly, 1867,

National Intelligencer, 1803-05.

New York Times, 1868.

New York Tribune, 1868.

Philadelphia Aurora and General Advertiser, 1803-05.

SECONDARY SOURCES

General Works

Adams, Henry. History of the United States of America During the Administrations of Thomas Jefferson and James Madison. 9 vols. New York: Charles Scribner's Sons, 1909.

Hildreth, Richard. The History of the United States of America. 6 vols. 1880. Reprint. New York: Augustus M. Kelley Publishers, 1969.

Biographies

Adams, Henry. John Randolph. Boston and New York: Houghton Mifflin Co., 1882.

Baker Leonard. John Marshall: A Life in Law. New York: Macmillan Publishing Co., 1974.

Beveridge, Albert J. Life of John Marshall. 4 vols. Boston and New York: Houghton Mifflin Co., 1916-19.

Brodie, Fawn M. Thaddeus Stevens: Scourge of the South. New York: W. W. Norton and Co., 1959.

_____. Thomas Jefferson: An Intimate History. New York: W. W. Norton and Co., 1974.

Bruce, William Cabell. John Randolph of Roanoke, 1773-1833. New York: G. P. Putnam's Sons, 1922.

Campbell, Tom W. Four Score Forgotten Men: Sketches of the Justices of the Supreme Court. Little Rock, Ark.: Pioneer Publishing Co., 1950.

Clark, Bennett Champ. John Quincy Adams: Old Man Eloquent. Boston: Little, Brown and Co., 1932.

Clarkson, Paul S. and Jett, R. Samuel. Luther Martin of Maryland. Baltimore and London: The Johns Hopkins Press, 1970.

Friedman, Leon and Israel, Fred L. eds. The Justices of the United States Supreme Court 1789-1969: Their Lives and Major Opinions. 4 vols. New York: Chelsea House Publishers, 1969.

Johnson, Gerald W. Randolph of Roanoke: A Political Fantastic. New York: Minton, Balch and Co., 1929.

Krug, Mark M. Lyman Trumbull: Conservative Radical. New York: A. S. Barnes and Co., Inc., 1965.

Lomask, Milton. Andrew Johnson: President on Trial. New York: Farrar, Straus and Co., 1960.

Malone, Dumas. Jefferson the President: First Term, 1801-1805. Boston: Little, Brown and Co., 1970.

Masterson, William H. William Blount. Baton Rouge: Louisiana State University Press, 1954.

Milton, George Fort. The Age of Hate: Andrew Johnson and the Radicals. New York: Coward-McCann, 1930.

Mitchell, Broadus. Alexander Hamilton: Youth to Maturity 1755-1788. New York: The Macmillan Co., 1957.

Peterson, Merrill D. Thomas Jefferson and the New Nation: A Biography. New York: Oxford University Press, 1970.

Thomas, Benjamin P. and Hyman, Harold M. Stanton: The Life and Times of Lincoln's Secretary of War. New York: Alfred A. Knopf, 1962.

Thomas, Lately. The First President Johnson: The Three Lives of the Seventeenth President of the United States of America. New York: William Morrow and Co., Inc., 1968.

Turner, Lynn W. William Plumer of New Hampshire, 1759-1850. Chapel Hill: University of North Carolina Press, 1962.

Schachner, Nathan. Thomas Jefferson. 2 vols. New York: Appleton-Century-Crofts, 1951.

Monographs

Ames, Herman v. The Proposed Amendments to the Constitution of the United States During the First Century of its History in the Annual Report of the American Historical Association for the Year 1896. 2 vols. Washington, D.C.: Government Printing Office, 1897.

Bates, Ernest Sutherland. The Story of the Supreme Court. Indianapolis and New York: Bobbs-Merrill Co., 1936.

Benedict, Michael Les. The Impeachment and Trial of Andrew Johnson. New York: W. W. Norton and Co., 1973.

Berger, Raoul. Impeachment: The Constitutional Problems. Cambridge: Harvard University Press, 1973.

Black, Charles L. Impeachment: A Handbook. New Haven and London: Yale University Press, 1974.

Borkin, Joseph. The Corrupt Judge: An Inquiry into Bribery and other High Crimes and Misdemeanors in the Federal Courts. New York: Clarkson N. Potter, Inc., 1962.

Bowers, Claude G. Jefferson In Power: The Death Struggle of the Federalists. Boston: Houghton Mifflin Co., 1936.

_____. The Tragic Era: The Revolution After Lincoln. Cambridge: Riverside Press, 1929.

Brant, Irving. Impeachment: Trials and Errors. New York: Alfred A. Knopf, 1973.

Brock, William R. An American Crisis: Congress and Reconstruction 1865-1867. New York: St. Martin's Press, 1963.

Burdick, Charles K. The Law of the American Constitution: Its Origins and Development. New York: G. P. Putnam's Sons, 1922.

Carson, Hampton L. The Supreme Court of the United States: Its History. Philadelphia: John V. Huber Co., 1891.

Channing, Edward. The Jeffersonian System, 1801-1811. New York: Harper and Brothers, 1906.

Corwin, Edward S. John Marshall and the Constitution: A Chronicle of the Supreme Court. New Haven: Yale University Press, 1919.

_____ and Peltason, Jack W. Understanding the Constitution. New York: Holt, Rinehart and Winston, 1967.

Cooley, Thomas M. The General Principles of Constitutional Law in the United States of America. Boston: Little, Brown and Co., 1898.

Cunningham, Noble E., Jr. The Jeffersonian Republicans in Power: Party Operations 1801-1809. Chapel Hill: University of North Carolina Press, 1963.

Dewey, Donald O. Marshall Versus Jefferson: The Political Background of Marbury v. Madison. New York: Alfred A. Knopf, 1970.

DeWitt, David Miller. The Impeachment and Trial of Andrew Johnson. 1903. Reprint. New York: Russell and Russell, 1967.

Diamond, Robert A., ed. Impeachment and the U.S. Congress. Washington, D.C.: Congressional Quarterly, 1974.

Dunning, William Archibald. Essays on the Civil War and Reconstruction. 1897. Reprint. New York: Harper and Row, Publishers, 1965.

Ellis, Richard E. The Jeffersonian Crisis: Courts and Politics in the Young Republic. New York: Oxford University Press, 1971.

Haines, Charles Grove. The Role of the Supreme Court in American Government and Politics 1789-1835. 2 vols. New York: Russell and Russell, 1944.

Haynes, Evan. The Selection and Tenure of Judges. ____, 1944.

Hughes, Charles Evans. The Supreme Court of the United States; Its Foundation, Methods and Achievements: An Interpretation. New York: Columbia University Press, 1928.

Hyman, Harold M. A More Perfect Union: The Impact of the Civil War and Reconstruction on the Constitution. New York: Alfred A. Knopf, 1973.

Kennedy, John F. Profiles in Courage. New York: Harper and Brothers, Publishers, 1955.

McKitrick, Eric L. Andrew Johnson and Reconstruction. Chicago: University of Chicago Press, 1960.

McPherson, Edward. The Political History of the United States of America During the Period of Reconstruction, April 15, 1865-July 15, 1870. 1871. Reprint. New York: Da Capo Press, 1972.

Meigs, William Montgomery. The Growth of the Constitution of 1787. 2nd ed. Philadelphia and London: J. B. Lippincott Co., 1900.

Murphy, Walter F. Congress and the Court: A Case Study in the American Political Process. Chicago: University of Chicago Press, 1962.

Randall, J. G. and Donald, David. The Civil War and Reconstruction. 2nd ed., rev. Lexington, Mass.: D. C. Heath and Co., 1969.

Rawle, William. A View of the Constitution of the United States. 1829. Reprint. New York: Da Capo Press, 1970.

Schwartz, Bernard. A Commentary on the Constitution of the United States. 2 vols. New York: The Macmillan Co., 1963.

Simpson, Alexander J. A Treatise on Federal Impeachments. 1916. Reprint. Wilmington, Del.: Scholarly Resources Inc., 1973.

Smelser, Marshall. The Democratic Republic 1801-1815. New York: Harper and Row, 1968.

Stampp, Kenneth M. The Era of Reconstruction 1865-1877. New York: Alfred A. Knopf, 1965.

Story, Joseph. Commentaries on the Constitution of the United States. 3 vols. 1833. Reprint. New York: Da Capo Press, 1970.

Trefousse, Hans Louis. Impeachment of a President: Andrew Johnson, the Blacks, and Reconstruction. Knoxville: The University of Tennessee Press, 1975.

Warren, Charles. The Making of the Constitution. Boston: Little, Brown and Co., 1928.

_____. The Supreme Court in United States History. 3 vols. Boston: Little, Brown and Co., 1922.

Articles

Benedict, Michael Les. "A New Look at the Impeachment of Andrew Johnson." Political Science Quarterly 88(1973): 349-67.

Berger, Raoul. "Impeachment for 'High Crimes and Misdemeanors.'" Southern California Law Review 44(1971):395-460.

_____. "Impeachment of Judges and 'Good Behavior' Tenure." Yale Law Journal 79(1970):1475-1531.

Blackmar, Charles B. "On the Removal of Judges: The Impeachment Trial of Samuel Chase." Journal of the American Judicature Society 48(1965):183-87.

Brown, Wrisley. "The Impeachment of the Federal Judiciary." Harvard Law Review 26(1913):684-706.

Carrington, R. W. "The Impeachment Trial of Samuel Chase." Virginia Law Review 9(1923):485-500.

Clark, M. V. "The Origin of Impeachment." In Oxford Essays in Medieval History. 1934. Reprint. Freeport, New York: Books for Libraries Press, Inc., 1968.

Dougherty, J. Hampden. "Inherent Limitations on Impeachment." Yale Law Journal 23(1913):60-87.

Ethridge, George H. "The Law of Impeachment." Mississippi Law Journal 8(1936):283-303.

Feerick, John D. "Impeaching Federal Judges: A Study of the Constitutional Provisions." Fordham Law Review 39(1970): 1-58.

Fenton, Paul S. "The Scope of the Impeachment Power." Northwestern University Law Review 65(1970):719-58.

Frankel, Jack E. "Removal of Judges--Federal and State." Journal of the American Judicature Society 48(1965): 177-82.

Gould, Ashley M. "Luther Martin and the Trials of Chase and Burr." Georgetown Law Journal 1(1912):17-22.

Henderson, John B. "Emancipation and Impeachment." Century Magazine 85(1912-13):196-209.

Humphrey, Alexander P. "The Impeachment of Samuel Chase." American Law Review 33(1899):827-52.

Hunt, Gaillard. "The President's Defense." Century Magazine 85(1912-13):422-34.

Ireton, Robert E. "Jefferson and the Supreme Court." Boston University Law Review 17(1937):81-89.

Johnson, Herbert A. "Impeachment and Politics." South Atlantic Quarterly 63(1964):522-63.

Keefe, Arthur J. "Explorations in the Wonderland of Impeachment." American Bar Association Journal 59(1973):885-88.

Kramer, Robert and Barron, Jerome A. "The Constitutionality of Removal and Mandatory Procedure for the Federal Judiciary: the Meaning of 'during good behavior.'" George Washington Law Review 35(1967):455-72.

Kurland, Philip B. "The Constitution and the Tenure of Federal Judges: Some Notes From History." University of Chicago Law Review 36(1969):665-98.

Lewis, H. H. Walker. "The Impeachment of Andrew Johnson: A Political Tragedy." American Bar Association Journal 40(1954):15-18, 80-87.

Lillich, Richard B. "The Chase Impeachment." American Journal of Legal History 4(1960):46-72.

Moore, William G. "Notes of Colonel W. G. Moore, Private Secretary to President Johnson, 1866-1868." American Historical Review 19(1913):98-132.

Otis, Harrison Gray. "The Causes of Impeachment." Century Magazine 85(1912-13):187-95.

Potts, Charles Shirley. "Impeachment as a Remedy." St. Louis Law Review 12(1927):15-38.

Roske, Ralph J. "Republican Newspaper Support For The Acquittal of President Johnson." Tennessee Historical Quarterly 11(1952):263-73.

Simpson, Alexander Jr. "Federal Impeachments." University of Pennsylvania Law Review 64(1916):651-95, 803-30.

Smith, James Morton. "Sedition in the Old Dominion: James T. Callender and The Prospect Before Us." Journal of Southern History 20(1954):157-82.

Stolz, Preble. "Disciplining Federal Judges: Is Impeachment Hopeless?" California Law Review 57(1969):659-70.

Taylor, Hannis. "The American Law of Impeachment." North American Review 180(1905):502-12.

ten Broek, Jacobus. "Partisan Politics and Federal Judgeship: Impeachment Since 1903." Minnesota Law Review 23(1938): 185-204.

Thomas, David Y. "The Law of Impeachment in the United States." American Political Science Review 2(1903):378-95.

Thompson, Frank Jr. and Pollitt, Daniel H. "Impeachment of Federal Judges: An Historical Overview." North Carolina Law Review 49(1970):87-121.

Truman, Benjamin C. "Anecdotes of Andrew Johnson." Century Magazine 85(1912-13):435-40.

Turner, Lynn W. "The Impeachment of John Pickering." American Historical Review 54(1949):485-507.

Van Nest, G. Willett. "Impeachable Offenses Under the Constitution of the United States." American Law Review 16(1882): 798-817.

Williams, F. L. "The Law of Impeachment." Albany Law Journal 65(1903):223-24.

Yankwich, Leon R. "Impeachment of Civil Officers Under the Federal Constitution." Georgetown Law Journal 26(1938): 849-67.

Ziskind, Martha. "Judicial Tenure in the American Constitution: English and American Precedents." In The Supreme Court Review. Edited by Philip B. Kurland. 12 vols. Chicago: University of Chicago Press, 1960-72.

Miscellaneous

Calvert, Robert A. "The Supreme Court in Crisis: Four Selected Cases." Master's thesis, North Texas State University, 1960.

Congressional Quarterly Almanac. 93d Cong., 2nd Sess. Vol. 30. Washington, D.C.: Congressional Quarterly, 1974.

Dictionary of American Biography. 23 vols. New York: Charles Scribner's Sons, 1928-1936.

Dictionary of National Biography. 21 vols. London: Oxford University Press, 1917-1971.

Encyclopedia of the Social Sciences. 15 vols. New York. Macmillan, 1967.

Hinds, Asher C. *Hinds' Precedents of the House of Representatives of the United States*. 8 vols. Washington, D.C.: Government Printing Office, 1907.

Smith, Solomon C. *Bibliography: Selected Writings on Impeachment*. New Haven, Conn.: Yale Law Library, 1973.