Chapter 6

Constitutional Background and the Practice of Impeachment in the United States

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INTRODUCTION

The Constitution of the United States of September 17, 1787, is undoubtedly one of the most important normative acts in history to date. After all, it brought forth a system that proved to be extremely durable and adaptable in the changing social, political, and economic circumstances. However, its robustness has not been determined solely by the provisions of the Constitution itself, but also by the unique historical conditions and the American political culture. Still, it remains undeniable that the legal solutions adopted in the 1787 Constitution largely set the course for the systemic development of the United States and, consequently, made a vital contribution to the political and economic standing that the country has attained. Hence, it is no surprise that the particular legal institutions provided for in the US Constitution continue to be a source of inspiration as one seeks optimal systemic solutions that could be applied in the legal systems elsewhere. One of those is impeachment, which the US Constitution lays down as the instrument to enforce the liability on the part of the President and other federal officials. For this reason, it represents a compelling and important object of research in legal sciences.

Consequently, this study will focus on the legal solutions associated with impeachment in the United States. Specifically, aspects under consideration will in-

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clude the origin of the institution, its subjective and objective scopes, as well as procedural characteristics and actual application. Thus structured, the inquiry will provide a basis for a number of relevant conclusions.

THE ORIGINS OF IMPEACHMENT IN THE US POLITICAL SYSTEM

Prior to a detailed discussion of the legal issues involved in the US impeachment, it may be worthwhile to reconstruct its origins so as to place the institution in its proper historical context and answer to what extent the impeachment provided for in the Constitution of 1787 had been inspired by legal solutions known previously.

The origins of the liability of public officials can be traced back as far as antiquity.[1] The example of ancient Athens is usually cited in this context, where various forms of holding public officials accountable existed. Arguably, this even included the proceedings as part of ostracism, which enabled persons who posed a threat to the foundations of democracy to be eliminated from public life.[2] It may be noted, however, that a solution more akin to modern impeachment was devised in ancient Sparta, whose law made it possible to try the ruling diarchs for an abuse of power. In such cases, the adjudicating body would be composed of the second king, the ephors, and the gerontes, while the sanctions it was entitled to administer included the death penalty, exile, deposition, and a fine.[3]

The mechanisms developed in antiquity proved incompatible with the legal and political realities of the Middle Ages. The special status of the monarch did not allow solutions that would enable their liability to be enforced directly, and the sole available form of public response to any abuses of power by the ruler was rebellion, which was legitimate only in extreme circumstances. At the same time, it should be remembered that such a power check entailed very serious risks since its use would in many cases result in a struggle that plunged the state into a profound crisis.[4] Hence, as early as the late Middle Ages, efforts were made to devise legal solutions under which the liability of the most important persons in the state could be enforced as part of its normal functioning. The first such mechanism was impeachment, which emerged in the English system in the fourteenth century.

[1] Michał Pietrzak, *Odpowiedzialność konstytucyjna w Polsce* (Warszawa: Wydawnictwo Naukowe PWN, 1992), 7.

[2] Krzysztof Wójtowicz, "Zasady i praktyka funkcjonowania odpowiedzialności konstytucyjnej w innych państwach," in *Trybunał Stanu w PRL*, ed. Zofia Świda-Łagiewska (Warszawa: Książka i Wiedza, 1983), 31.

[3] Tadeusz Maciejewski, *Historia powszechna ustroju i prawa* (Warszawa: Wydawnictwo C. H. Beck, 2015), 16.

[4] Wójtowicz, "Zasady i praktyka funkcjonowania odpowiedzialności konstytucyjnej w innych państwach," 32–33; Pietrzak, *Odpowiedzialność konstytucyjna w Polsce*, 31–32.

Generally speaking, impeachment in medieval England was a procedure whereby any English subject, including a royal official, could be charged with breaking the law or at least acting against the interests of the state. A distinctive feature of impeachment was that the most important procedural roles were distributed between the two Houses of Parliament. Thus, the indictment could be brought by the House of Commons, while its legitimacy was decided by the House of Lords.[5] Significantly, this division was directly substantiated in English law. The House of Lords was the superior judicial body, while the House of Commons represented all the countries that possessed powers of prosecution within the framework of jury courts.[6]

One should remember that the English impeachment had certain significant shortcomings that prevented its function—that is, holding officials who abused their power accountable, from being realized to the full. This should be attributed mainly to the fact that the monarch had means at their disposal which, in practice, enabled them to influence the proceedings in parliament and even nullify their outcomes. Notably, those measures included the right to dissolve or adjourn parliament, as well as the right of pardon with respect to the convicted. Thus, the effectiveness of English impeachment largely depended on the mutual balance of power between the parliament and the ruler.[7]

The English practice of using impeachment is relatively extensive, with more than a hundred cases attested. However, it remained in abeyance from the mid-fifteenth until the early eighteenth century, chiefly due to the strong position of the Tudors on the English throne.[8] The institution saw a revival in the seventeenth century,[9] though it should be noted that the ruler was able to exercise clemency over the impeached as long as 1701. It was not until the Act of Settlement that that power was abolished, opening up the prospect of actual accountability for royal officials. In practice, this would never materialize, as the eighteenth century saw the rise of political accountability of the English ministers,[10] which supplanted the systemic role that impeachment could have played. Unsurprisingly, its importance would

[5] Pietrzak, *Odpowiedzialność konstytucyjna w Polsce*, 31–32.

[6] Wójtowicz, "Zasady i praktyka funkcjonowania odpowiedzialności konstytucyjnej w innych państwach," 34–35.

[7] Wójtowicz, "Zasady i praktyka funkcjonowania odpowiedzialności konstytucyjnej w innych państwach," 32–33.

[8] Wójtowicz, "Zasady i praktyka funkcjonowania odpowiedzialności konstytucyjnej w innych państwach"; Aleksander Makowski, in Aleksander Makowski and Longin Pastusiak, *Impeachment. O usuwaniu polityków z urzędu* (Warszawa: Konsalnet, 1999), 14.

[9] *Constitutional Grounds for Presidential Impeachment. Report by the Staff of the Impeachment Inquiry* (Washington, 1974), 4–6.

[10] Marek Wąsowicz, *Historia ustroju państw Zachodu. Zarys wykładu* (Warszawa: Liber, 2007), 156–60; Michał Sczaniecki, *Powszechna historia państwa i prawa* (Warszawa: Wydawnictwo Prawnicze LexisNexis, 2007), 317–18.

decline from the eighteenth century onwards, only to be used for the last time in the early nineteenth century.[11]

The close historical and legal ties between England and the independence-seeking colonies in North America made impeachment attractive enough for the authors of the US Constitution to include it in their work. This was primarily due to the fact that they envisioned a strong executive, which would nevertheless be sufficiently controlled by the legislature that represented the people. Even so, the creators of the US Constitution modified certain vital aspects of impeachment, as they did not intend it to be used for the direct criminal prosecution of public officials, but conceived it as a mechanism enabling their removal from office, for example, in order to institute ordinary criminal proceedings against them before common courts.[12] This influenced the particular aspects of impeachment-related provisions in the federal Constitution, particularly in terms of penalties imposed under such a procedure.

IMPEACHMENT IN THE US SYSTEM: GENERAL REMARKS

Before embarking on a detailed analysis of the constitutional solutions pertaining to impeachment, a general characterization of the institution is indispensable. First, its essential framework should be reconstructed based on several provisions of the US Constitution, as impeachment is referred to in Article I, Sections 2 and 3, Article II, Sections 2 and 4, and Article III, Section 2. The first of those states that it is the exclusive prerogative of the House of Representatives to formulate impeachment charges. This is supplemented by Article I, Section 3, according to which only the Senate is empowered to decide on the merits of the indictment brought by the House of Representatives. This provision also mentions the sanctions to be applied by the Senate upon finding the impeached party guilty. Specifically, it can only rule on the expulsion from office and the loss of capacity to accept and perform any honorary or remunerated position in the state service.

The subsequent relevant provision—that is, Article II, Section 2, which concerns the presidential right of clemency, expressly asserts that it does not apply to those convicted by the Senate. However, from the standpoint of this study, the most important of the aforementioned provisions is Article II, Section 4, which addresses the fundamental issues relating to impeachment. First, it identifies the subjects that are liable under this procedure ("The President, Vice President and all Civil Offi-

[11] See Wójtowicz, "Zasady i praktyka funkcjonowania odpowiedzialności konstytucyjnej w innych państwach," 34–39; Makowski, 18.

[12] Makowski, 23–24. More broadly on the debates surrounding impeachment during the work on the Constitution, see *Constitutional Grounds for Presidental Impeachment. Report by the Staff of the Impeachment Inquiry*, 7–17.

cers of the United States"). Second, it specifies acts that may provide grounds for the indictment formulated by the House of Representatives; these are confined to treason, bribery, or other high crime or misdemeanors.

The above are further supplemented by Article III, Section 2, which pertains to the judiciary. Among other things, it states that while criminal cases are to be tried by a jury, impeachment is not subject to such a procedure. Although on the face of it the regulation may appear irrelevant, even superfluous, it is worth noting that through such a wording the constitutional legislator qualified at least some of the cases heard under this procedure as criminal ones.

Although a detailed analysis of the provisions cited above follows later on, certain general conclusions arising from the constitutional provisions on impeachment should be stated. In the first place, the institution in question dovetails perfectly with the system of checks and balances that characterizes the American system.[13] Without a doubt, it serves to balance the executive power by the legislature and, importantly, the judiciary as well (in view of the fact that federal judges may also be held liable within the framework of impeachment). Thus, the representative body of the parliament is entrusted with the vital function of overseeing the lawfulness of actions of all other actors in the system of governance and has the competence to eliminate those who abuse their power from public life. Consequently, by the will of the constitutional legislator, Congress has in a sense become the guardian and guarantor of the foundations of the American system, having been granted powers relating to impeachment.

Second, it seems legitimate to conclude that by ruling on the merits of the indictment brought by the House of Representatives, the Senate is exceptionally vested with judicial capacity. This is determined not only by the material aspect of such a prerogative of the Senate but also by the pertinent reference in Article III of the US Constitution, which regulates the judicial power in its entirety. Therefore, it must be presumed that the constitutional legislator has delegated its exercise not only to the courts but also to the upper chamber of Congress, albeit to a very limited extent. Apparently, this might affect how the Senate understands its role in the impeachment process, namely that determining the charges formulated in the House of Representatives should, at least to some extent, be distanced with regard to current politics. On the other hand, the authors of the Constitution do not

[13] Sczaniecki, *Powszechna historia państwa i prawa*, 329; Andrzej Pułło, *System konstytucyjny Stanów Zjednoczonych* (Warszawa: Wydawnictwo Sejmowe, 1997), 21–22; Jarosław Szymanek, "Determinanty amerykańskiego systemu prezydenckiego," in *Idee, instytucje i praktyka ustrojowa Stanów Zjednoczonych Ameryki*, eds. Paweł Laidler and Jarosław Szymanek (Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2014), 211, 219. Doubts in this regard were expressed by Jerzy Jaskiernia who, however, ultimately concluded that impeachment may be considered "a peculiar preventive brake," as opposed to "a typical brake within the system of tripartite division of powers"—Jerzy Jaskiernia, "Zagadnienie podstaw do wszczęcia procedury impeachment przeciwko urzędnikom federalnym w prawie i praktyce ustrojowej Stanów Zjednoczonych," *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 37, no. 4 (1975): 133–34.

seem to have intended for senators who adjudicate impeachment to be required to divest themselves of their political views or even their party affiliation. After all, the decision to grant judicial powers to the Senate had to take into account that it was a political body. Therefore, the senators involved in the impeachment process should not so much act as thoroughly impartial judges but be guided in their final decisions, even more so than in any other matters, by the good of the nation in the first place, as opposed to their own political sympathies.

Third, in its essentials, impeachment should be regarded as a reification of so-called constitutional accountability—that is, the liability of the supreme state officials for infringements of the law that do not necessarily constitute a crime.[14] The American model of such accountability is strictly parliamentary, which means that, unlike the procedure in many other countries, the process aimed at enforcing it takes place exclusively before the parliament, without the involvement of the judiciary. This highlights its political dimension.

Given the above, one should also draw attention to the separation of the procedural roles in impeachment between the two houses of parliament. Although undoubtedly inspired by the English system, this is also underpinned by the constitutional characteristics of each chamber of Congress. Indeed, in the American system, the parliamentary role of the House of Representatives is evident in its very name: it is to represent the people as a whole. This is evinced in its composition, which relies on the population criterion for each state. The Senate was assigned a different role. Since two senators are invariably elected from each state, this house represents the constituent parts of the federation. Thus, collectively, the Senate embodies the union of all states. Now, as regards impeachment, it follows that the prosecution powers have been entrusted to the representatives of the American people in their entirety, while judicial powers are granted to a body that, in a particular fashion, epitomizes the unity of the state. This reflects the special position of federal officials, who serve the state as a whole and can only be tried for the abuse of power by the supreme representation of that state. Furthermore, it needs to be noted that the authors of the Constitution envisaged the Senate as a more conservative and restrained chamber,[15] which would make it better suited to judging abuses of power in a fair and just manner.

In terms of general observations concerning impeachment, one should also underscore the particular nature of the sanctions administered under this procedure, which comprise only early removal from office and, potentially, prohibition from

[14] Bogusław Banaszak, *Porównawcze prawo konstytucyjne współczesnych państw demokratycznych* (Warszawa: Lex a Wolters Kluwer business, 2012), 287; Monika Kowalska, *Odpowiedzialność członków egzekutywy przed Trybunałem Stanu w III Rzeczypospolitej Polskiej* (Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, 2018), 45–46.

[15] Stanisław Gebert, *Kongres Stanów Zjednoczonych Ameryki* (Wrocław, Warszawa, Kraków, Gdańsk: Zakład Narodowy im. Ossolińskich, 1981), 97.

holding state functions in the future. It follows that the institution in question is primarily a preventive one—that is, it is intended to preclude violations of the law (abuse of office) in the future. On the other hand, its repressive dimension is limited. While both removal from office and prohibition from holding public positions may undoubtedly be seen as just requital for the abuses committed, this is not their primary purpose. This is also corroborated by the constitutional norm, according to which a conviction by the Senate does not preclude holding one criminally liable, whereby typical repressive sanctions are imposed following judgment.

SUBJECTS LIABLE UNDER IMPEACHMENT

Detailed reflections on impeachment in the United States should set out with an analysis of its subjective scope—that is, the catalog of persons who may be held liable thereunder. This matter is regulated by the previously cited Article II, Section 4, which states that the House of Representatives may impeach "all civil Officers of the United States," including the explicitly listed President and Vice President.

The structure of the provision suggests that the authors of the Constitution intended impeachment to be primarily an instrument through which the President and Vice President may be influenced, with a view to safeguarding the correct functioning of those bodies. Simultaneously, the American Constitution unequivocally asserts that other persons—that is, all civil servants of the United States, may also be accountable under impeachment.

The above term employed by the US Constitution legislator in Article II, Section 4 is not entirely clear. Undoubtedly, since it refers to "civil" officers, military officials are not accountable before Congress.[16] There is also little doubt that "civil Officers of the United States" denote those who hold the most important positions in the administration, meaning members of the cabinet such as the Secretary of State. Still, it is debatable whether lower-ranking officials can be indicted under impeachment and, to resolve this question, it is argued that two classes of federal officials may be distinguished within the Constitution itself: the principal ones, appointed by the President following the recommendation and consent of the Senate, as well as the inferior ones who, in line with Article II, Section 2 of the Constitution, can be appointed otherwise—that is, by the President alone, by the courts or the heads of ministerial departments. Consequently, within the meaning of the Constitution, only a person who assumes their office in any manner described above will be an officer. By the same token, all other federal officials, even if they perform their duties within the administration in a narrow sense, will not be civil officers as referred

[16] Anna Hadała-Skóra, "Competences of the United States Congress in the Impeachment Procedure," *Przegląd Prawa Konstytucyjnego* 58, no. 6 (2020): 584.

to in Article II, Section 4 of the US Constitution, and thus will not be liable under impeachment.[17]

Given the subjective scope of that institution, one should also consider whether it extends to the members of Congress as well. Although they are not appointed by the President (or a court or the head of a ministerial department), they do perform one of the most important functions in the state, which begs the question of whether the designation of a civil officer in Article II, Section 4 of the Constitution applies to them as well. Unlike the aforementioned hypothetical liability of lower-ranking state functionaries, this issue had its practical ramifications, since the idea of indicting one senator was raised in the House of Representatives as early as 1787.[18] Still, it must be assumed that the above arguments regarding the definition of US officials in terms of impeachment are also fully applicable to the members of Congress. In effect, they must be denied such status, which renders any impeachment of the senators inadmissible.[19]

As regards the subjects that may be liable under impeachment, one cannot fail to note that federal judges fall within the above definition of a civil officer in the service of the United States.[20] In their case, the institution in question acquires a particular significance, as it is the only means of removing them from office for committing reprehensible acts. Thus, with respect to federal judges, impeachment performs a role construed in other systems as disciplinary liability, whereby one is usually answerable to bodies composed exclusively of other members of the judiciary. At the same time, the substantial differences between standard disciplinary liability and impeachment warrant the conclusion that US federal judges are in a particularly comfortable position as far as the possibility of losing their office for misconduct is concerned. This is due to the fact that a range of actions that could result in removal from office under disciplinary liability are nevertheless tolerated in the United States, as impeachment proceedings are not instituted in cases that are not vital to the state. Such a state of affairs, pathological in itself, appears to be incompatible with the US Constitution, which expressly states in Article III, Section 1 that judges shall hold their office as long as they hold it "during good Behaviour." Hence, the state apparatus should respond by removing a judge from office whenever they commit an act that seriously offends the dignity of their office. This should lead to

[17] Jared P. Cole and Todd Garvey, *Impeachment and Removal*, CRS Report 2015, no. R44260, 3–6.

[18] Ultimately, his liability was not pursued through impeachment because the defendant lost his seat in the parliament, among other things. The issue is discussed more extensively by A. Makowski, who also reconstructs the positions on the lawfulness of impeaching a member of Congress in the House of Representatives; see Makowski, 30–34.

[19] Cole and Garvey, *Impeachment and Removal*, 3.

[20] This excludes so-called territorial judges, who hold office temporarily and may be dismissed by the President before their term expires. (Jaskiernia, "Zagadnienie podstaw do wszczęcia procedury impeachment przeciwko urzędnikom federalnym w prawie i praktyce ustrojowej Stanów Zjednoczonych," 120; Gebert, *Kongres Stanów Zjednoczonych Ameryki*, 489).

the conclusion that if impeachment, by virtue of its nature, fails to accomplish such a goal, the legislature should devise alternative methods of removing federal judges, and the pertinent legal regulations should not be considered unconstitutional.[21]

Concerning the subjective scope of impeachment, it is also necessary to determine whether it applies to "civil officers of the United States" who no longer hold their office. After all, it would seem that if the purpose of the institution in question is first and foremost to remove a person from office, it would be pointless to have a person whose term has expired impeached by the House of Representatives. On the other hand, the sanctions imposed by the Senate include declaring an individual incapable of accepting and performing any honorary or remunerated position in public service. And yet, administering such a sanction undoubtedly makes sense with regard to persons who no longer hold any public office at any given time. Moreover, if impeachment were to apply only to the incumbents, they could easily avoid the liability by handing in their resignation in advance. Admittedly, the essential intention of the institution would thus be preserved (the wrongdoer would lose power), but refraining from having a misdeed discredited by a Senate conviction is hardly acceptable. In consequence, there is no evident legal impediment to the impeachment and trial of a person who has already lost the status of a "civil officer of the United States." However, it must be noted that systemic practice is not uniform in this regard. On the one hand, one could cite the case of William Belknap, who resigned from his post as Secretary of War a few hours before being indicted, yet the Senate deemed itself competent to decide on the legitimacy of the charges against him (which, incidentally, ended in his acquittal). On the other, resignation from office caused the impeachment procedure to be discontinued in a number of cases, including Richard Nixon's, for instance.[22] Significantly, a different approach was adopted in 2021 with another former US President, Donald Trump, whose trial in the Senate ended less than a month after his term had elapsed.

Considering the above, it would appear that impeaching anyone for an act they committed prior to assuming federal office would be inadmissible. Although the Constitution does not preclude such an eventuality explicitly, it would hardly be reconcilable with the essential intent of the institution, which is to enable the legislature to control the actions of officials. Also, since the House of Representatives is empowered to indict a federal official for a given act as part of impeachment, this, in a sense, includes the presumption that the act was committed in connection with the function held, or at least while discharging that function.[23] Nonetheless, it did happen that

[21] See Makowski, 43–44 and the studies cited there, esp. Raoul Berger, *Impeachment. Constitutional Problems* (Toronto, New York, London: Harvard University Press, 1974), 177–78.

[22] Cole and Garvey, *Impeachment and Removal*, 16–17.

[23] In the course of the Bill Clinton trial, more than 400 law professors signed a letter in which it was argued that for a conviction under impeachment, a connection must be ascertained between the defendant's alleged act and their official duties. However, that interpretation was rejected, not least

impeachment also encompassed acts committed by the arraigned individual before they came into federal office. The case in question involved Judge Gabriel Thomas Porteous, whom the Senate convicted for wrongdoing whilst serving as a state judge and seeking appointment to a federal court, among other things. However, no formal indictment has ever been brought by the House of Representatives in respect of any US official solely for misdeeds prior to their assumption of a federal position.[24]

OBJECTIVE SCOPE OF LIABILITY UNDER IMPEACHMENT

Having discussed the categories of subjects who may be charged and convicted under impeachment, attention should now focus on the grounds for liability thus arising. As previously noted, this particular issue is regulated in Article II, Section 4 of the US Constitution, which provides that removal from office upon conviction by the Senate is only possible where treason, bribery, or any other high crimes or misdemeanors are involved. An interpretation of these terms is therefore indispensable.

It is relatively easy to determine the normative substance of "treason," as the notion is directly defined in the Constitution itself, specifically in Article III, Section 3, which states that only waging war against the United States or joining, aiding, or supporting its enemies constitutes treason. Similarly, "bribery," whose meaning is well-established in both common law[25] and US legislation,[26] generally denoting the crime of corruption, is hardly considered doubtful.

Conversely, the precise meaning of the terms "high crimes" and "misdemeanors" is somewhat problematic. In this respect, it is widely observed that those concepts developed within English parliamentary law, which was autonomous with respect to criminal law as well.[27] Consequently, they cannot be equated exclusively with felonies. Liability under impeachment may therefore result from criminal acts in the strict sense, as well as from other types of abuse of power, even if they do not fall within the purview of criminal legislation.[28] This corresponds to the unique na-

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because of the inconsistent views of the signatories, who themselves acknowledged that there must be exceptions to the aforementioned rule, especially where particularly serious offences such as murder are involved. (Michael J. Gerhardt, "The Special Constitutional Structure of the Federal Impeachment Process," *Law and Contemporary Problems* 63, no. 1–2 (2000): 248–49).

[24] Cole and Garvey, *Impeachment and Removal*, 15–16.

[25] Cole and Garvey, *Impeachment and Removal*, 7, including the work cited there—that is, William Blackstone, *Commentaries on the Laws of England* (Oxford: Clarendon Press, 1769), 139.

[26] The felony defined as "bribery" is described in detail in para. 201 18 United States Codex.

[27] Makowski, 47–48; Jaskiernia, "Zagadnienie podstaw do wszczęcia procedury impeachment przeciwko urzędnikom federalnym w prawie i praktyce ustrojowej Stanów Zjednoczonych," 124–25.

[28] Tom Ginsburg, Aziz Huq, and David Landau, "The Comparative Constitutional Law of Presidential Impeachment," *The University of Chicago Law Review* 88, no. 1 (2021): 112; Cole and Garvey,

ture of impeachment, notably the delegation of traditional prerogatives to a political body such as the Senate.[29] It is also consistent with the range of sanctions employed within this framework, which pertain exclusively to the exercise of public functions and the capacity to assume them. It also tallies with the constitutional stipulation that a conviction by the Senate does not preclude ordinary criminal proceedings. Such characteristics underline the political, and not necessarily criminal, nature of impeachment.[30]

Moreover, regarding the objective scope of that institution, the question arises as to whether it is not broader in the case of federal judges—that is, whether it does not extend to acts other than those enumerated in Article II, Section 4 of the US Constitution. This is due to the fact that, as already noted, Article III, Section 1 of the US Constitution states that it is requisite for a judge to hold the office in an irreproachable manner. Now, since a judge may be removed only through impeachment, this might warrant the conclusion that they may thus be held accountable not only for "treason, bribery, high crimes or misdemeanors," but also for any other manifestation of the reprehensible exercise of office.[31] However, such an interpretation does not appear acceptable. Indeed, Article II, Section 4 of the US Constitution clearly specifies the grounds for impeachment against any civil officer of the United States, therefore Article III, Section 1 cannot be presumed to alter the latter norm. Instead, as previously observed, it should be construed as a provision that allows the legislature to devise an alternative procedure for removing judges who may not have engaged in "treason, bribery, high crimes or misdemeanors" but have committed acts that are tantamount to the reprehensible exercise of the judicial office.

PROCEEDINGS BEFORE CONGRESS

Having discussed the essential grounds for impeachment and its objective scope, it is necessary to take a look at the related procedural aspects, which are in no way regulated at the constitutional level.

The right to institute proceedings before the House of Representatives is available first and foremost to any member of the House. This may also ensue at the request of other entities, including in particular the US Judicial Conference (in the case of federal judges) or state legislatures. It is also permissible for impeachment

Impeachment and Removal, 7–8; Makowski, 49–50; Gebert, *Kongres Stanów Zjednoczonych Ameryki*, 488–89; Izabela Kraśnicka, "Dwukrotny impeachment prezydenta Donalda Trumpa jako precedens w historii Stanów Zjednoczonych Ameryki," *Przegląd Sejmowy* 169, no. 2 (2022): 89.

[29] Gerhardt, "The Special Constitutional Structure of the Federal Impeachment Process," 246.

[30] Cole and Garvey, *Impeachment and Removal*, 8.

[31] Cole and Garvey, *Impeachment and Removal*, 9.

to commence as a result of a petition submitted to the House of Representatives and approved by the latter. Subsequently, the case is then examined by one of the relevant committees, most often the Judiciary Committee, so as to inquire into the allegations and advise the House whether there are grounds for impeaching a particular person. It should be remembered that the committee's position is not binding on the House, which is why one can impeach officials who, in the committee's opinion, are innocent.[32]

Indictment is effected by virtue of the ordinary majority. Once a resolution regarding the matter has been passed, the House of Representatives appoints its representatives, known as managers, who then present the indictment to the Senate. Upon completion of this task, the managers report to the House concerning the performance of their duty.[33]

The core impeachment proceedings take place before the Senate. First of all, it summons the defendant to appear either in person or represented by a defense counsel, although this obligation is not absolute. The defendant has the right to argue against the articles of impeachment as well as to plead that the charges are insufficient or that they are not a civil officer of the United States and therefore not subject to impeachment at all.[34]

The Senate then holds a hearing, which may be conducted in its entirety during a plenary session of the Senate or partly before a committee. It opens with the charges being read by the attorneys of the House of Representatives. The hearing is chaired by the President but, if a trial is brought against the President of the United States, the Chief Justice of the Federal Supreme Court takes their place, in line with Article I, Section 3 of the US Constitution.[35] The chairperson decides on all evidentiary matters, although they may refer them to the entire Senate for decision. Moreover, any senator may request that an issue be examined by the chamber acting in plenary. The hearing ends with closing speeches from both parties, whereby the attorneys of the House of Representatives are the last to speak.[36]

Upon conclusion of the hearing, the senators go into closed session, followed by an open vote on the verdict, with each article of impeachment voted on separately. A two-thirds majority of the attending senators is required for conviction. If this occurs, the Senate decides in yet another vote whether to impose the sanc-

[32] Cole and Garvey, *Impeachment and Removal*, 17–19; Gebert, *Kongres Stanów Zjednoczonych* Ameryki, 490.

[33] Cole and Garvey, *Impeachment and Removal*, 19.

[34] Cole and Garvey, *Impeachment and Removal*, 20.

[35] During Donald Trump's second trial, Chief Justice John Roberts refused to preside over the Senate. This aroused some controversy, as he did not explain his position (Kraśnicka, "Dwukrotny impeachment prezydenta Donalda Trumpa jako precedens w historii Stanów Zjednoczonych Ameryki," 101). However, it seems that Roberts' stance was due to the fact that Donald Trump was already a former US President at the time, and therefore the premise arising from the above norm was not met.

[36] Cole and Garvey, *Impeachment and Removal*, 21.

tion, which prohibits the individual concerned from accepting and performing any honorary or remunerated function in the state service. Here, the chamber arrives at the decision by an ordinary majority.[37]

THE INSTITUTION OF IMPEACHMENT IN PRACTICE

Following the analysis of the legal background of American impeachment, it would be fitting to discuss impeachment in practice, at least by way of a general outline. Consequently, it may be possible to illustrate the extent to which the solutions provided in the federal Constitution (whose considerable potential is indisputable) have proved relevant to the functioning of the US political system.

First of all, it should be noted that by October 2022, formal impeachment charges had been brought in the US in just twenty-one cases. The vast majority of the latter—that is, fifteen, involved federal judges, including one federal Supreme Court judge. One procedure was instituted against a member of Congress (senator)[38] and, similarly, a Cabinet member (Secretary of War) was impeached on one occasion only. Three US Presidents were indicted in the four remaining cases, with impeachment brought twice against Donald Trump.

To date, impeachment has resulted in conviction and removal from office in eight instances, exclusively involving federal judges. Also, only in three of those did the Senate resolve to bring the additional sanction to bear, prohibiting individuals from holding state offices.[39] Nine further cases, including all presidential defendants, culminated in acquittal. In the remaining four cases, the Senate refrained from making the final decision, as the term in office of the defendants had come to an end.[40]

It is observed in the doctrine that the acts which provide grounds for convictions under impeachment can be classified into three general categories. The first encompasses acts in which power was exceeded or abused. Such was the nature of allegations

[37] Cole and Garvey, *Impeachment and Removal*, 21. However, that practice was criticized to some degree in the doctrine, which maintained that such decision should also be made by a two-thirds majority (Kraśnicka, "Dwukrotny impeachment prezydenta Donalda Trumpa jako precedens w historii Stanów Zjednoczonych Ameryki," 90 and the literature cited there).

[38] At the same time, this was the first successful impeachment by the House of Representatives.

[39] Interestingly, Alcee Hastings, one of the federal judges with respect to whom the Senate opted for no penalty, was elected a member of the House of Representatives shortly after that conviction and served in that capacity for almost twenty years until his death in 2021. Hastings is also the only representative of the African-American minority to have been convicted by impeachment.

[40] Based on information available from the official website of the US Senate: https://www.senate.gov/about/powers-procedures/impeachment/senate-impeachment-role.htm and the House of Representatives: https://history.house.gov/Institution/Origins-Development/Impeachment/ (accessed October 28, 2022).

against President Andrew Johnson, who was indicted for violating the law which limited his freedom to dismiss members of the Cabinet without the consent of the Senate.

The second category comprises acts which, generally speaking, consist of inappropriate exercise of one's office. For instance, Judge John Pickering was convicted for appearing in court intoxicated and using "profane" language. In contrast, the third category of activities that warrant impeachment conviction includes exploiting one's office for illegitimate purposes, such as personal gain. A typical example of such an activity is accepting bribes, which resulted in the Senate's conviction of the aforementioned Judge Alcee Hastings.[41]

It may be noted that the impeachment procedure itself has been instituted in the House of Representatives much more frequently—that is, around sixty times, but the ensuing formal indictments were fewer. Here, probably the most notorious case involved President Richard Nixon who, most likely fearing conviction, resigned from office and caused the proceedings to be terminated already in the first chamber of Congress.[42]

CONCLUSIONS

The above analysis enables one to formulate certain conclusions about impeachment as such, as well as its characteristics and usefulness in the contemporary US political and legal system. Thus, it should be noted in the first place that impeachment is an institution with a well-established tradition, dating back to medieval England. At first glance, this very fact might raise some doubts as to its contemporary applicability. However, the authors of the US Constitution did not adopt the English solutions blindly, but adapted them to the overall system they designed, based on the Enlightenment conception of separation of powers. For this reason, as part of the entire framework of governance in the United States, impeachment has stood the test of time and proved to be an instrument that does meet the needs of the present day.[43]

Even so, such an observation does not mean that all aspects of the US impeachment prompt no reservations or doubts at the very least. It appears that the most serious issue associated with the institution is the irremovability of judges. Under the assumption that the removal of a federal judge from office is only admissible if they are convicted by the Senate, the constitutional provision according to which

[41] Cole and Garvey, *Impeachment and Removal*, 11–15; Makowski, 50.

[42] Makowski, 93–94.

[43] Interestingly, it has not always been appraised along these lines. In particular, prior to the attempted indictment of Richard Nixon, numerous criticisms of impeachment were articulated in the doctrine, while it was recognized relevant only insofar as it applied to judges; see Jaskiernia, "Zagadnienie podstaw do wszczęcia procedury impeachment przeciwko urzędnikom federalnym w prawie i praktyce ustrojowej Stanów Zjednoczonych," 119–20 and the literature cited there.

judges cannot be removed if their exercise of office is irreproachable becomes an illusory one. This represents a major gap, which could be addressed either by using impeachment against judges much more frequently or, which seems more appropriate, developing an alternative procedure for removing those judges who have engaged in reprehensible conduct. In doing so, it would be necessary to separate the procedures from each other to the greatest extent possible, so that Congress retains the right to try federal judges for acts that are exceptionally objectionable and detrimental to the interests of the state. This is because the power to adjudicate such cases is directly granted to the Senate by the Constitution.

In other respects, impeachment solutions seem to deserve a largely positive assessment. The catalog of subjects accountable before Congress has been correctly constructed, and remains consistent with the role of Congress and the position of the most important federal officials within the system. The catalog of acts that may constitute grounds for impeachment does not arouse any major controversy either, and its relative vagueness cannot be regarded as a defect. That indefiniteness is indeed justified by the political nature of the liability to which the procedure is dedicated. This is further supported by the narrow catalog of penalties that the Senate may decide to impose, and especially by its restraint in applying the sanction by virtue of which an individual is deprived of the ability to hold state offices after conviction.

The peculiar nature of impeachment also justifies entrusting relevant prosecutorial and judicial prerogatives to the parliament. Although such a conclusion may appear highly controversial, having such cases heard and decided by the federal Supreme Court, as it had been originally intended,[44] would not be appropriate, since the latter body would acquire excessive political significance. It would also be problematic given the President's power to appoint Supreme Court judges. Thus, it must be assumed that the Supreme Court's adjudication in impeachment cases would require a thorough modification of the pertinent constitutional solutions and the court itself. Indeed, such a court would perform its duties reliably and retain unassailable integrity only if its members were not nominated by the President. Furthermore, in order to eliminate the risk of impeachment being abused to influence the President, it would be necessary to adopt a much higher majority threshold in the House of Representatives required for indictment, so that it would only be feasible with the significant participation of the political milieu supporting the head of state.[45]

[44] Makowski, 93–94; Jaskiernia, "Zagadnienie podstaw do wszczęcia procedury impeachment przeciwko urzędnikom federalnym w prawie i praktyce ustrojowej Stanów Zjednoczonych," 123.

[45] In this context, Polish solutions concerning the constitutional accountability of the head of state may be regarded as exemplary. The latter is indicted by a body composed of members of both chambers of parliament, by a two-thirds majority vote. The adjudication itself is entrusted to a body composed of persons elected by the first chamber, unlike the common courts, whose judges are appointed by the President. Incidentally, the Polish model of constitutional accountability does, however, demonstrate other shortcomings that impede its correct functioning, but any related reflections are beyond the scope of this study.

In conclusion, it should be underlined once again that US impeachment merits an overall positive assessment as an institution. It may serve as a source of inspiration for systemic solutions in other countries. Nonetheless, one should remember that the strength of American constitutionalism does not lie only, or even primarily, in the legal solutions designed several hundred years ago, but also derives considerably from the American political and legal culture, in which solutions that might prove anachronistic or even harmful in a different socio-political context are readily adapted to contemporary challenges. Consequently, any attempts at adopting American solutions, including those relating to impeachment, require great caution and the ability to see systemic solutions from a broad perspective. "Transplanting" the legal mechanisms discussed in this study into an incompatible substrate may, in fact, result in failure or even the destruction of a given democratic system. After all, opting for erroneous solutions in mechanisms enabling the removal of power-abusing individuals may foster their impunity, and consequently contribute to informal modifications of the government system and the transformation of democracy into authoritarianism. In its turn, such a phenomenon would be utterly at odds with the goals of impeachment, the political thought of the authors of the US Constitution, and the ideals of Enlightenment.

Summary: The subject of the author's reflection is the institution of impeachment provided for in the US Constitution. The subject of analysis is its genesis in the American system, its subject and object scope, as well as the procedural aspects related to its application. The author also presents reflections on the sanctions that are applied under impeachment. The study is completed with analyses of the practical aspects of the use of this institution in the United States, especially in recent years.

Keywords: American law, impeachment, US Constitution, United States Congress

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