

# Judicial Power in the American System, with Particular Emphasis on the Impeachment Procedure

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## INTRODUCTION

Since 1787, the Constitution has been the supreme law of the United States of America. Its first three articles form the basis for the functioning of the state and shape the system that is in force, namely the separation of power. According to this, the federal government is divided into three branches: the executive, which consists of the President; the bicameral Congress, which exercises legislative power; and the judicial branch, consisting of the Supreme Court and other federal courts. This ‘trias politic model’ was first introduced by Charles-Louis de Secondat, baron de La Brède et de Montesquieu, a French judge and political philosopher, who postulated that to ensure freedom as effectively as possible, these three branches shall be separate and act independently. He believed that “when the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.”<sup>1</sup> The separation of powers is basically the division of responsibilities into distinct branches to limit any one branch in exercising the core functions of another; the legislative is responsible

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<sup>1</sup> Montesquieu, *The Spirit of Laws* (Kitchener: Batoche Books, 2001), 173.

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for enacting laws and imposing taxes, the executive is responsible for enforcing the laws, while the judicial branch interprets the laws. According to Montesquieu, the key is to maintain the judiciary's power as real, not only as ostensible power.<sup>2</sup> This is important because the intention of the separation of powers is to prevent the concentration of unchecked power by providing for "checks" and "balances" to avoid autocracy and preclude any overreaching by one branch over another.

## IMPEACHMENT: A TOOL OF ACCOUNTABILITY

One of the institutions significant in the separation of power is impeachment. The United States Constitution allows The House of Representatives to impeach, and the Senate to remove, executive and judicial officers. A judicial officer, in this case, should be understood as a person with the responsibilities and powers to facilitate, arbitrate, preside over, and make decisions and directions in regard to the application of the law.<sup>3</sup> This leads to the judicial power of the United States, which is established by Article III of the Constitution, which states: "The judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office."<sup>4</sup> "Good behavior" has no legal definition and has been the subject of numerous discussions. For example, Professor Martin Redish believes that "Good Behavior" should simply be used as a cross-reference to the "High Crimes and Misdemeanors" standard for impeachment set out in Article II, Section 4, to which federal judges are also subject.<sup>5</sup> This is most probably not the right opinion. In our view, we should follow the reasoning of Professors Prakash and Smith, who proposed the following: "Good Behavior" provides a distinct method, above and beyond impeachment, for removing federal judges from office, at a standard of misbehavior somewhat lower than that required under impeachment.<sup>6</sup> Section 2 of this article also requires trial by jury in all criminal cases, except impeachment cases. At the same time, we must remember that the legal system of the United States is based on federal law and is extended by statutes

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<sup>2</sup> Stephen Holmes, "Lineages of the Rule of Law," in *Democracy and the Rule of Law*, eds. Adam Przeworski and José María Maravall (Cambridge: Cambridge University Press, 2003), 26.

<sup>3</sup> "Judicial Officer Law and Legal Definition," USLegal, accessed June 10, 2020, <http://definitions.uslegal.com/j/judicial-officer/>.

<sup>4</sup> United States Senate, Constitution of the United States, Article III, Section 2.

<sup>5</sup> Martin H. Redish, "Judicial Discipline, Judicial Independence, and the Constitution: A Textual and Structural Analysis," *Southern California Law Review* 72, no. 2–3 (1999): 673, 692.

<sup>6</sup> Saikrishna Prakash and Steven D. Smith, "How To Remove a Federal Judge," *The Yale Law Journal* 116, no. 1 (2006): 86.

passed by state legislatures and local laws adopted by counties and cities. Based on that, impeachment can also occur at the state level. Each state's legislature can impeach state officials, including the governor, in accordance with their respective state constitution.

## HIGH CRIMES AND MISDEMEANORS

As mentioned before, impeachment can be used in the cases of crimes and misdemeanors on the part of judicial officers, and that also applies to state judges. The concept of "high crimes and misdemeanors" is found in the US Constitution. It also appears in state laws and constitutions as a basis for disqualification from holding office. Originating in English common law, these words have acquired a broad meaning in US law.<sup>7</sup> The exact meaning of the phrase cannot be found in the Constitution itself. Article II, Section 4, states that "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."<sup>8</sup> High crimes refer to those punishable offenses that only apply to high persons, that is, to public officials, those who, because of their official status, are under special obligations that ordinary persons are not under, and which could not be meaningfully applied or justly punished if committed by ordinary persons.<sup>9</sup> Currently, doctrine and writing state that the phrase "High crimes and misdemeanors" refers to breaches of fiduciary duty. High crimes and misdemeanors are not limited to the commission of crimes, but they do not include mere political differences. While violations of criminal law provide grounds for impeachment, high crimes and misdemeanors encompass breaches of the duties of loyalty, good faith, and care, and of the obligations to account and to follow instructions (including the law and Constitution) when administering one's office.<sup>10</sup>

As we know, the United States judiciary is independent of the government and consists of the Supreme Court, the US Court of Appeal, and the US District Courts. The Constitution of 1787 itself regulates the court system in a very general way, determining only the jurisdiction of the Supreme Court, without indicating the number of judges, the manner of their selection, or the general rules characterizing how judges function. This regulation is included in the first part of Title 28 of the United

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<sup>7</sup> Impeachable Offenses, Legal Information Institute, accessed June 10, 2020, <https://www.law.cornell.edu/constitution-conan/article-2/section-4/impeachable-offenses>.

<sup>8</sup> United States Senate, Constitution of the United States, Article II, Section 4.

<sup>9</sup> Jon Roland, *Meaning of High Crimes and Misdemeanors*, The Constitution Society, Last updated: August 14, 2020, [https://www.constitution.org/1-Constitution/cmt/high\\_crimes.htm](https://www.constitution.org/1-Constitution/cmt/high_crimes.htm).

<sup>10</sup> Robert G. Natelson, "Impeachment: The Constitution's Fiduciary Meaning of 'High . . . Misdemeanors,'" *Federalist Society Review* 19 (2018): 72.

States Code.<sup>11</sup> Initially, in the Supreme Court, there were six judges (justices), including the chairman of the court (chief justice). Currently, the Court has nine members. This number was established in The Judiciary Act of 1869, sometimes called the Circuit Judges Act of 1869, which states that “the Supreme Court of the United States shall hereafter consist of the Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum, and for the purposes of this act there shall be appointed an additional associate justice of said court.”<sup>12</sup> What is important to note is that its decisions are final and legally binding for all parties. The Constitution does not formulate specific requirements that a potential candidate must meet. Every man or woman, regardless of their age, property, place of residence, education, or even citizenship, can obtain the presidential nomination. The only limitation is the prohibition of selecting a person who is related to or associated in the first or second degree with an incumbent member of the Supreme Court. In practice, however, the choice of a judge largely takes on the nature of the political strategy of the incumbent president, who seeks to gain the support of certain social or local groups from which the nominee originates. It is clear from past practice that candidates were appointed whose views coincided, if not completely then in the main part, with the views of the president himself. In the first years of the functioning of the Supreme Court, close associates of the President, George Washington, were appointed as the first judges.

As we have observed in recent years, despite the passage of time, this method of selecting candidates for the Supreme Court has not changed significantly: they were elected from among the members of the political party with whom the president was associated, with the assumption that they would continue the adopted direction of adjudication, even after the current president’s term expires, and after the election of a presidential candidate with the opposing political and ideological beliefs. When making a decision, the Supreme Court reviews the actions of state and federal governments and decides whether the laws are constitutional. The number of judges adjudicating in individual federal courts varies and derives directly from the law. Among the courts of appeals, the most numerous in terms of the number of judges is the United States Court for the Ninth Circuit, in which twenty-nine regional judges adjudicate.<sup>13</sup> What is worth mentioning is that while the US Constitution omits such aspects as how they are to be chosen, it does state that federal judges retain their offices as long as they perform them impeccably. In practice, this means that a federal court judge can hold office throughout their life unless they are removed from office by the impeachment procedure. State courts have a three-tier structure. Courts of the first instance, which deal with civil and criminal cases, are trial courts, created

<sup>11</sup> 28 U.S.C. paras. 1–482.

<sup>12</sup> Judiciary Act of 1869, para. 1.

<sup>13</sup> Statement of Circuit Judge Alex Kozinski to the House Judiciary Subcommittee on Courts. US House of Representatives. October 21, 2003.

by the Senate. The second instance is the court of appeal, these courts are called legislative courts or specialized courts, including the Court of Federal Compensation, the Appellate Court of Veterans, the Tax Court, the Court of International Trade, and bankruptcy courts. The third most important is the Supreme Court. The situation of the judicial branch on a state level is definitely more complicated and unfortunately, it is impossible to describe the structure in a synthetic way, but what is also worth mentioning is that on this level judicial branch can be impeached. This paper will also raise the subject of impeachment regarding state judges.

## EXAMINING JUDICIAL ACCOUNTABILITY MECHANISMS: FROM RECALL TO IMPEACHMENT

However, before we move on to discuss the impeachment procedure and examples of cases over the years, it is worth noting that various other legal solutions apart from impeachment have been adopted in state legislation to deprive a judge of their office, such as recall, removal by the state parliament by voting, address—removal by the governor upon the motion of the two chambers of the state parliament, or removal by the appropriate committee or by the court upon the motion of these committee. In almost all states, it was not limited to accepting only one of the procedural routes, rather the aforementioned procedures operate side by side, creating a consistent system for controlling judges' work. One institution worth mentioning is recall, which is a vote on the removal initiated by collecting the appropriate number of signatures under an appropriate application (petition). According to the California Constitution, a recall "is the power of the electors to remove an elective officer"<sup>14</sup> and can be called whenever voters wish "to express their dissatisfaction with their elected representatives." State laws differentiate the entities whose removal by means of the recall procedure is admissible. Every public officer is subject to removal in the State of Nevada,<sup>15</sup> in Minnesota a member of the Senate or the House of Representatives, an executive officer of the state identified in Article V, Section 1 of its Constitution, or a judge of the Supreme Court, the Court of Appeals, or a District Court,<sup>16</sup> whereas in the state of Idaho every public officer can be removed with the exception of judicial officers.<sup>17</sup> The normative solution adopted in a given state also determines the conditions for initiating the procedure. Cancellation by recall<sup>18</sup> is possible regardless of the assessment of the official's work, and thus can be seen as an instrument of control in voters' hands, or depends on the form of particularly reprehensible behavior. In

<sup>14</sup> The Constitution of the State of California, Article II, Section 13.

<sup>15</sup> The Constitution of the State of Nevada, Article II, Section 9.

<sup>16</sup> The Constitution of the State of Minnesota, Article VIII, Section 6.

<sup>17</sup> The Constitution of the State of Idaho, Article VI, Section 6.

<sup>18</sup> Robert L. Owen, "The Recall of Judges," *The Yale Law Journal* 21, no. 8 (1912): 655–58.

states that have adopted the second of the indicated models of the recall institution, reasons for cancellation (grounds for recall) are usually a violation of oath, improper performance of duties, or committing a crime. In the event of a vacancy occurring, either as a result of the deprivation of the office through an appropriate procedure or as a result of death or resignation, state law provides for various arrangements for filling the seized office. In most states, the governor then gains the right to appoint a successor, who holds office until it is taken over by a person elected in the next general election. For example, in Nevada, the governor does not have unlimited freedom of choice, because they appoint one of the three candidates proposed by the competent committee. When depriving a judge of office due to the recall procedure, in some states there is a solution, which presupposes holding elections for a given office, separate from voting on the removal or connected with it.

When discussing the ways of appointing and dismissing a justice in the American legal order, it is also necessary to describe the institution of retention election. These are general elections, during which eligible citizens decide whether the current justice will hold office for another term, or whether a newly elected person should take his or her position. The current justice shall not compete with other candidates. However, state regulations have led to many modifications to this basic type of election. Retention election is inextricably connected with substantive choice. It is after the candidates have been appointed by the commission and appointed by the governor (or the legislature) that a general vote takes place. Depending on specific state regulations, the candidates appointed by the executive are required to hold their office for the indicated trial period and then are assessed by citizens. If the required majority of votes is obtained, the justice retains his or her office and performs it until the end of the originally appointed term of office.<sup>19</sup> Currently, retention elections are carried out in nineteen states, in six of them with regard to the judges of the courts of all instances.

Another way for a justice to be removed from the Supreme Court is through resignation. In the initial period of judicial activity of the Supreme Court, its composition changed very dynamically. Of the thirteen judges nominated in the first years of the existence of the Court up to 1801, six of them resigned from their positions. Those resignations had two basic, common causes: low prestige of the position held and technical difficulties in performing the role of a judge caused by the ill-conceived construction of how the district appellate courts function. However, all of the methods mentioned above can be considered an easy method, while impeachment is recognized as the hardest and most complicated way.

Thus far, nineteen actual impeachments of federal officers have taken place. Of these, fifteen were federal judges: thirteen district court judges, one Court of Ap-

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<sup>19</sup> Mary A. Celeste, "The Debate over the Selection and Retention of Judges: How Judges Can Ride the Wave," *Court Review: The Journal of the American Judges Association* 46 (2010): 84.



peals judge (who also sat on the Commerce Court), and one Supreme Court Associate Justice. Since the Supreme Court first convened in 1790, there have been 113 justices and only one ever has been impeached. On the state level, the court for the trial of impeachments may differ somewhat from the federal model. For instance, in New York, the Assembly (lower house) impeaches, and the State Senate tries the case, but the members of the seven-judge New York State Court of Appeals (the state's highest, constitutional court) sit with the senators as jurors as well.<sup>20</sup> On the federal level, however, the impeachment process follows a unified procedure. An impeachment begins when an official behaves in a manner that the people believe disqualifies him or her from further public service. A complaint requesting an impeachment investigation of that official is lodged with the House of Representatives. That request may be general in its scope and can be filed by individual citizens or at the request of a single Representative, a group of Representatives, or the President. The next step is to forward such a complaint to the House Judiciary Committee, which forwards it to the Subcommittee on the Constitution. This Subcommittee is then required to investigate the situation, and if there is a basis for impeachment, Articles of Impeachment are created. These are the set of charges drafted against a public official and do not result in the removal of the official, but instead require the enacting body to take further action, such as bringing the articles to a vote before the full body. First, the full Judiciary Committee acquainted itself with them and voted, and in the event of approval, then the House of Representatives votes. If at least one article gets a majority (218 out of 435 members) vote, then the person at the office can be impeached. The next step is the move to the Senate, which becomes a courtroom. A team of lawmakers from the House, known as managers, plays the role of prosecutors. The accused has defense lawyers, while the Senate serves as the jury. To find the impeached official guilty, the Senate votes again, and this time a two-thirds majority is required. The Constitution allows the Senate to impose two penalties: remove the individual from that specific office, or remove the individual from that office and also prohibit him from holding all future offices.

## LANDMARK IMPEACHMENT CASES IN UNITED STATES HISTORY

In order to explain the procedure of impeachment in detail, we shall now present the most important and famous processes that have taken place so far or are currently in progress. In our opinion, it is necessary to start with what was definitely the most-publicized affair, namely that regarding the Supreme Court judge, Samuel

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<sup>20</sup> The Constitution of the State of New York, Article VI, Section 24.

Chase. He remains the only US Supreme Court justice to ever have been impeached. He was an earnest Federalist supporter, known for his open adherence both on and off the bench, and campaigned strongly for John Adams in the election of 1800. In 1803, Chase delivered a grand jury charge to the US circuit court in Maryland that was sharply critical of the Republicans for repealing the 1801 judiciary statute and abolishing the circuit judgeships that the act in question had established. After Jefferson took office, Chase began openly attacking the President and his policies. Chase even took to condemning the Democratic-Republicans from the bench. It is believed that because of his actions and statements, President Jefferson decided to remove the judge, who might have posed a severe problem in continuing to exercise power. The President immediately wrote to Joseph Nicholson, one of his party leaders in the House of Representatives, suggesting action against Chase: "Ought this seditious and official act 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 these questions for your consideration, for myself, it is better that I should not interfere."<sup>21</sup> Virginia Congressman John Randolph of Roanoke rose to the challenge and took charge of the impeachment. The House of Representatives served Chase with eight articles of impeachment in late 1803, which centered on three charges.<sup>22</sup> The first charge arose from Chase's remarks before the Baltimore grand jury. The second charge stemmed from his conduct in the 1800 treason trial of John Fries. The third charge focused on Chase's conduct in the 1800 sedition trial of James Callender. Together, the House managers argued that these three charges represented judicial misconduct amounting to impeachable high crimes and misdemeanors. On March 12, 1804, the US House of Representatives voted to impeach Chase by a seventy-three to thirty-two margin, appointing John Randolph, a cousin of Jefferson and a mercurial politician in his own right, to head the House Managers responsible for prosecuting Chase in his trial before the Senate. The trial began on February 9, 1805, and the House Managers took ten full days to present the testimony of more than fifty witnesses. Chase did not testify during the proceedings but instead read a prepared statement that attempted to overturn the charges. To convict Chase twenty-two votes, or two-thirds of the Senate, were necessary. On March 1, 1805, the Senate announced that Chase was acquitted on all counts.<sup>23</sup> The closest vote was nineteen to fifteen in favor of convicting Chase for his anti-Democratic-Republican remarks to the Baltimore

<sup>21</sup> Thomas Jefferson, "From Thomas Jefferson to Joseph H. Nicholson, 13 May 1803," Founders Online, accessed June 10, 2020, <https://founders.archives.gov/documents/Jefferson/01-40-02-0278>.

<sup>22</sup> "The Samuel Chase Impeachment Trial," Law Library—American Law and Legal Information, accessed June 10, 2020, <https://law.jrank.org/pages/5151/Chase-Samuel-Samuel-Chase-Impeachment-Trial.html>.

<sup>23</sup> "Samuel Chase," Supreme Court History, accessed June 10, 2020, [https://web.archive.org/web/20070713052523/http://www.supremecourthistory.org/02\\_history/subs\\_timeline/images\\_associates/007.html](https://web.archive.org/web/20070713052523/http://www.supremecourthistory.org/02_history/subs_timeline/images_associates/007.html).



grand jury.<sup>24</sup> The impeachment raised constitutional questions over the nature of the judiciary and was the end of a series of efforts to define the appropriate extent of judicial independence under the Constitution. It set the limits of the impeachment power and helped to set the parameters of what kinds of conduct would warrant a judge's removal from the bench. The failure of the Senate to convict allowed Chase to return to the Supreme Court and serve 6 more years as an associate justice. More importantly, the acquittal deterred the House of Representatives from using impeachment as a partisan political tool.

After Justice Chase's case, there were two other moves to impeach sitting justices. The first came in 1952, when William O. Douglas was the subject of hearings, although the procedure of impeachment was not initiated until 1969. The second was the 1969 case of Associate Justice Abe Fortas when he became the first Supreme Court Justice to step down under threat of impeachment after submitting a letter of resignation. In 1968, President Johnson nominated Fortas to replace the retiring Chief Justice Earl Warren, and subsequently a series of scandals erupted. It was discovered that Fortas was teaching in a summer school at American University with a salary of approximately \$15,000, which was 40% of his salary as a Supreme Court Justice. However, his remuneration was paid not by American University but by Arnold & Porter law firm clients, many of whom had cases potentially heading to the Supreme Court.<sup>25</sup> Moreover, he was accused of receiving \$20,000 from the Wolfson Foundation, a family foundation of Louis Wolfson, who was indicted for securities fraud. According to Canon 25 of "The Canons of Judicial Ethics" prepared in 1922 for the American Bar Association by a committee headed by Chief Justice William Howard Taft: "A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of the private business or to charitable enterprises."<sup>26</sup> Therefore, his conduct was viewed as clearly contrary to the aforementioned canon and the US Constitution, meaning the articles of impeachment were prepared. As a result, though Justice Fortas returned the money, his reputation was ruined and he stepped down from the Court in shame. His cautionary tale should teach all Justices that the appearance of impropriety can crush an otherwise stellar career.

Shortly after Justice Abe Fortas' resignation, Congressman Gerald Ford made an attempt to remove the US Supreme Court Justice William O. Douglas from the bench. On April 15, 1970, in his speech before the House floor, Ford accused Justice Douglas of writing for pornographic magazines, of espousing a 'hippie-yippie-style revolution' in his writings, of accepting \$350 for an article he wrote on folk music

<sup>24</sup> Kenneth Jost, *Supreme Court A to Z* (Thousand Oaks: CQ Press, 2012), 238.

<sup>25</sup> Ciara Torres-Spelliscy, "The Cautionary Tale of Abe Fortas," Brennan Center for Justice, February 6, 2018, <https://www.brennancenter.org/blog/cautionary-tale-abe-fortas>.

<sup>26</sup> "Justice Fortas Impeachment," CQ Press Library, accessed June 10, 2020, <https://library.cqpress.com/cqalmanac/document.php?id=cqal69-1247815>.

in the magazine *Avant Garde*, of ties with Albert Parvin, the owner of Las Vegas Gambling enterprises, and possible links with some of Mr. Parvin's underworld as societies.<sup>27</sup> Despite these allegations, on December 3 the Special House Judiciary Subcommittee voted three to one that it had found no grounds for impeaching Justice Douglas. The Subcommittee divided the allegations into two categories: charges involving judicial conduct and charges involving non-judicial conduct. The distinction was made in an attempt to resolve the controversy created by the two constitutional provisions, which affect the impeachment of federal judges. One provision states that federal judges shall hold their offices subject to "good behavior" (Article III, Section 1). The other states that an impeachable offense shall be "treason, bribery, or other high crimes and misdemeanors" (Article II, Section 4). The report stated thus: "Such a distinction permits recognition that the content of the word 'misdemeanor' for conduct that occurs in the course of the exercise of the power of the judicial office includes a broader spectrum of action than is the case when non-judicial activities are involved."<sup>28</sup> Although Congressman Ford's endeavor proved unsuccessful, he did author the most memorable definition summarizing the spirit of American impeachments, judicial and otherwise. When asked what an impeachable offense was, he stated, "an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history."<sup>29</sup>

Definitely, the second most important process of impeachment in United States history is the first impeachment of any judge that occurred in the US. The first federal officer to be impeached was John Pickering. During his career, he served as Chief Justice of the New Hampshire Superior Court of Judicature and as a judge for the US District Court for the District of New Hampshire. His impeachment was based on similar motives to the ones that caused the process of Justice Samuel Chase. It was part of Thomas Jefferson's plan to remove Federalist judges from office. He sent evidence to the House of Representatives against Pickering, accusing him of having made unlawful rulings and being of bad moral character due to intoxication while on the bench. Again Nicholson and Randolph played key roles in the whole process. What is worth mentioning is that this case was the one to shape the entire process of impeachment, as never before had impeachment gone further than the committee of the House of Representatives. That is why for most of the first two months a Senate committee was put to work on drafting detailed rules of procedure. John Pickering was in declining health. In 1801, he had suffered a nervous breakdown and had been

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<sup>27</sup> "Role of Vice-President Designate Gerald Ford in the Attempt to Impeach William O. Douglas," Ford Library Museum, accessed June 10, 2020, <https://www.fordlibrarymuseum.gov/library/document/0023/1687418.pdf>.

<sup>28</sup> "Justice Douglas Impeachment," CQ Press Library, accessed June 10, 2020, <https://library.cqpress.com/cqalmanac/document.php?id=cqal70-1292316>.

<sup>29</sup> Kenneth C. Davis, "The History of American Impeachment," *Smithsonian Magazine*, June 12, 2017, <https://www.smithsonianmag.com/history/what-you-need-know-about-impeachment-180963645/>.

unable for a term to perform his judicial duties. When he returned to the bench, his conduct was notably inconsistent; he frequently appeared in an intoxicated state. It should be noted that Judge Pickering was not represented in person or by counsel—the proceedings consisted largely of the uncontested presentation of the evidence. The Senate declined to postpone judgment until confirmation of the insanity of the accused. It declared that it would follow the English precedent (including “the very celebrated case of Warren Hastings”)<sup>30</sup> and pronounce judgment on each of the articles. Pickering was convicted of all charges by the US Senate by a vote of nineteen to seven and removed from office on March 12, 1804. However, Pickering’s impeachment was controversial, in large part because the Constitution defines impeachable offenses as “treason, bribery, or other high crimes and misdemeanors.” While Pickering may have been unfit to serve as a federal judge, he had not committed any crime.<sup>31</sup>

Latterly, the most conspicuous and exceptional case is the Impeachment of the Supreme Court of Appeals of West Virginia.<sup>32</sup> While nowadays the impeachment of an individual justice is a common practice in the US, to commence this procedure against the entire institution is undoubtedly precedential. The Supreme Court of Appeals of West Virginia is the State Supreme Court of the State of West Virginia, consisting of five justices selected by partisan election. On the appropriate ballot, in addition to the candidates’ names, their party affiliation is stated, which most often indicates their views. Thus, this case is regarded as rather political, as the Republicans held the legislature and governor’s office, whereas the Democrats elected the majority of the justices in the Supreme Court of Appeals of West Virginia. At the end of 2017, the media reported the expenses of the court. The United States Attorney for the Southern District of West Virginia initiated an investigation and, as a result of an audit conducted by the state’s legislative auditor, many irregularities were detected, such as undocumented use of court-owned vehicles and rental cars paid for by the State for personal use, while ignoring federal law for taxable fringe benefits,<sup>33</sup> personal use of an antique desk, and the improper purchase of gift cards. Moreover, justices purportedly spent over \$1,114,000 on individual office renovations. The former Chief Justice of the West Virginia Supreme Court of Appeals, Allen Loughry, was indicted on twenty-two counts and convicted of eleven federal

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<sup>30</sup> William F. Swindler, “High Court of Congress: Impeachment Trials, 1797–1936,” *American Bar Association Journal* 60, no. 4 (1974): 420–28.

<sup>31</sup> “Federal Judge John Pickering Remembered for His Impeachment,” *Constitutional Law Reporter*, accessed June 10, 2020, <https://constitutionalawreporter.com/2017/04/04/john-pickering-federal-judge-impeachment/>.

<sup>32</sup> Campbell Robertson, “West Virginia House of Delegates Votes to Impeach Entire State Supreme Court,” *The New York Times*, August 14, 2018, <https://www.nytimes.com/2018/08/14/us/west-virginia-impeach-supreme-court.html?fbclid=IwAR1Lk3tirgt73qK6V2t49WubRKjKmdxGuELqhzmozYGV-N--szGawOBXf6g>.

<sup>33</sup> Supreme Court of Appeals of West Virginia—Legislative Audit Report, 2018, accessed June 10, 2020, <https://www.documentcloud.org/documents/4438388-Supreme-Court-of-Appeals-4-15-18.html>.

offenses including wire and mail fraud, witness tampering, and making false statements to federal investigators. The fifth Supreme Court Justice, Menis Ketchum, resigned from the court office and pleaded guilty to a felony count of wire fraud, as a result of which the Supreme Court of Appeals annulled Ketchum's license to practice law in the state of West Virginia.

Consequently, the West Virginia House Judiciary Committee commended the impeachment of all four remaining justices with each trial held separately: Justice Allen Loughry for personal use of state computer equipment and state vehicles, use of public funds to frame personal mementos, overspending for renovations, moving an antique Cass Gilbert desk to his own home, false statements to federal investigators; Justice Margaret Workman, Justice Robin Davis and Justice Beth Walker for lack of oversight and overspending. After the full House of Delegates decided to impeach the four remaining justices, Justice Robin Davis resigned from office, although she was still considered to have been impeached. Thus far, only Justice Beth Walker has been tried, while the others await their proceedings. After receiving articles of impeachment and approving the trials' rules and dates, the West Virginia Senate concluded not to remove Justice Beth Walker from office, as it was decided that public condemnation would serve as sufficient punishment. Justice Margaret Workman's trial was blocked by an injunction issued by five circuit justices reconstituted temporarily in the West Virginia Supreme Court of Appeals on the grounds of a violation of the separation of power doctrine. In consequence, not only was this trial postponed but also the entire process of the Impeachment of the Supreme Court of Appeals of West Virginia was halted, as the injunction retroactively was applied to Justice Robin Davis' and Justice Allen Loughry's cases. The West Virginia Senate asked the US Supreme Court to overturn the injunction but the Court later refused to review a case involving the impeachment of West Virginia's Supreme Court.<sup>34</sup>

## CONCLUSIONS

As we can see, the system of selecting and removing judges in the American system is highly complex, very unclear, and complicated. It aroused numerous controversies and discussions, which was especially evident on the occasion of President Trump's recent election of a new Supreme Court judge. Nevertheless, it does not seem that in the near future, there will be any changes in any system, whether federal or state. The jurisdiction and powers of the Supreme Court are clearly defined, and although the judge's party affiliation still plays a significant role, it is not

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<sup>34</sup> Brad McElhinny, "U.S. Supreme Court Declines to Hear W.Va. Impeachment Case," MetroNews, October 7, 2019, <http://wwmetronews.com/2019/10/07/u-s-supreme-court-declines-to-hear-w-va-impeachment-case/>.

the decisive factor influencing the ruling. The position of the Supreme Court has significantly strengthened among the central authorities, and today there is not the slightest doubt about the great prestige of the justices' position. At the state level, the court system seems to be tailored to specific states. Of course, allegations of corruption remain; however, these always appear and are often motivated by false arguments and have a political background. What's more, even with the most efficient system, instances of corruption might occur, a state of affairs that depends to a large extent on the nature of the person and the circumstances. Even attempts to change the requirements that a judge should meet would not guarantee that each time he or she would be appointed as a judge of impeccable character.

**Summary:** The chapter delves into the historical and legal frameworks underpinning the judicial power in the United States, with a special focus on the impeachment process. The authors explore the constitutional basis of judicial power, rooted in the separation of powers principle, and the unique mechanism of impeachment provided for in the US Constitution. The research underscores the impeachment process's significance as a check on judicial (and other federal) officers, ensuring accountability and adherence to "good behavior" standards. By examining various historical impeachment cases, the article highlights the complexity and nuanced interpretations of "high crimes and misdemeanors" and the balance between judicial independence and accountability. The conclusion emphasizes the enduring relevance of impeachment in safeguarding democratic principles and the rule of law, despite its rarity and the controversies it often engenders.

**Keywords:** American law, judicial power, impeachment, constitutional law, separation of powers

## BIBLIOGRAPHY

- Celeste, Mary A. "The Debate over the Selection and Retention of Judges: How Judges Can Ride the Wave." *Court Review: The Journal of the American Judges Association* 46 (2010): 82–100.
- Davis, Kenneth C. "The History of American Impeachment." *Smithsonian Magazine*, June 12, 2017, <https://www.smithsonianmag.com/history/what-you-need-know-about-impeachment-180963645/>.
- "Federal Judge John Pickering Remembered for His Impeachment." *Constitutional Law Reporter*. Accessed June 10, 2020, <https://constitutionallawreporter.com/2017/04/04/john-pickering-federal-judge-impeachment/>.
- Holmes, Stephen. "Lineages of the Rule of Law." In *Democracy and the Rule of Law*, edited by Adam Przeworski and José María Maravall, 19–61. Cambridge: Cambridge University Press, 2003.
- Impeachable Offenses. Legal Information Institute. Accessed June 10, 2020, <https://www.law.cornell.edu/constitution-conan/article-2/section-4/impeachable-offenses>.

- Jefferson, Thomas. "From Thomas Jefferson to Joseph H. Nicholson, 13 May 1803." Founders Online. Accessed June 10, 2020, <https://founders.archives.gov/documents/Jefferson/01-40-02-0278>.
- Jost, Kenneth. *Supreme Court A to Z*. Thousand Oaks: CQ Press, 2012.
- "Judicial Officer Law and Legal Definition." USLegal. Accessed June 10, 2020, <http://definitions.uslegal.com/j/judicial-officer/>.
- "Justice Douglas Impeachment." CQ Press Library. Accessed June 10, 2020, <https://library.cqpress.com/cqalmanac/document.php?id=cqal70-1292316>.
- "Justice Fortas Impeachment." CQ Press Library. Accessed June 10, 2020, <https://library.cqpress.com/cqalmanac/document.php?id=cqal69-1247815>.
- McElhinny, Brad. "U.S. Supreme Court Declines to Hear W.Va. Impeachment Case." MetroNews, October 7, 2019, <http://wvmetronews.com/2019/10/07/u-s-supreme-court-declines-to-hear-w-va-impeachment-case/>.
- Montesquieu. *The Spirit of Laws*. Kitchener: Batoche Books, 2001.
- Natelson, Robert G. "Impeachment: The Constitution's Fiduciary Meaning of 'High . . . Misdemeanors.'" *Federalist Society Review* 19 (2018): 68–72.
- Owen, Robert L. "The Recall of Judges." *The Yale Law Journal* 21, no. 8 (1912): 655–58. <https://doi.org/10.2307/784839>.
- Prakash, Saikrishna, and Steven D. Smith. "How To Remove a Federal Judge." *The Yale Law Journal* 116, no. 1 (2006): 72–137. <https://doi.org/10.2307/20455714>.
- Redish, Martin H. "Judicial Discipline, Judicial Independence, and the Constitution: A Textual and Structural Analysis." *Southern California Law Review* 72, no. 2–3 (1999): 673–706.
- Robertson, Campbell. "West Virginia House of Delegates Votes to Impeach Entire State Supreme Court." The New York Times, August 14, 2018, <https://www.nytimes.com/2018/08/14/us/west-virginia-impeach-supreme-court.html?fbclid=IwAR1Lk3tirgt73qK6V2t49WubRKjKmdxGuELqhzmozYGV-N--szGawOBXf6g>.
- Roland, Jon. "Meaning of High Crimes and Misdemeanors." The Constitution Society, Last updated: August 14, 2020, [https://www.constitution.org/1-Constitution/cmt/high\\_crimes.htm](https://www.constitution.org/1-Constitution/cmt/high_crimes.htm).
- "Role of Vice-President Designate Gerald Ford in the Attempt to Impeach William O. Douglas." Ford Library Museum. Accessed June 10, 2020, <https://www.fordlibrarymuseum.gov/library/document/0023/1687418.pdf>.
- "Samuel Chase." Supreme Court History, accessed June 10, 2020, [https://web.archive.org/web/20070713052523/http://www.supremecourthistory.org/02\\_history/subs\\_timeline/images\\_associates/007.html](https://web.archive.org/web/20070713052523/http://www.supremecourthistory.org/02_history/subs_timeline/images_associates/007.html).
- "The Samuel Chase Impeachment Trial." Law Library—American Law and Legal Information. Accessed June 10, 2020, <https://law.jrank.org/pages/5151/Chase-Samuel-Samuel-Chase-Impeachment-Trial.html>.
- Swindler, William F. "High Court of Congress: Impeachment Trials, 1797–1936." *American Bar Association Journal* 60, no. 4 (1974): 420–28.
- Supreme Court of Appeals of West Virginia—Legislative Audit Report, 2018. Accessed June 10, 2020, <https://www.documentcloud.org/documents/4438388-Supreme-Court-of-Appeals-4-15-18.html>.



---

Torres-Spelliscy, Ciara. "The Cautionary Tale of Abe Fortas." Brennan Center for Justice, February 6, 2018, <https://www.brennancenter.org/blog/cautionary-tale-abe-fortas>.

**Acts of Laws and Regulations**

United States Code.

Judiciary Act of 1869.

Statement of Circuit Judge Alex Kozinski to the House Judiciary Subcommittee on Courts. US House of Representatives. October 21, 2003.

The Constitution of the State of California.

The Constitution of the State of Idaho.

The Constitution of the State of Minnesota.

The Constitution of the State of Nevada.

The Constitution of the State of New York.

The Constitution of the United States.