

**High Crimes and Misunderstandings: Interpretation of the Impeachment
Clause in the Twenty-First Century**

An honors thesis for the Department of Political Science
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Tufts University, 2022

Abstract

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This paper contributes to an extensive body of literature on the impeachment clause by analyzing how the ambiguous phrase “high crimes and misdemeanors” is interpreted in the twenty-first century. The contemporary Congress is displaying unprecedented levels of hyperpolarization - why, then, were votes to convict in the double impeachments of President Trump (2020 and 2021) more bipartisan than in any prior presidential impeachment trial? To answer this question, traditional approaches to interpreting the impeachment clause, namely legal realism and legal formalism, are first discussed. I then conduct a historical analysis of the origins of the impeachment clause in English law, followed by a textual analysis of the 21 impeachment resolutions charged against civil officers. A comparison of the articles charged in judicial impeachments and presidential impeachments reveals substantial differences in application of the impeachment clause. Particularly, inappropriate conduct by a president must be significantly more offensive than a violation of the “good behavior” standard to warrant removal from office. Finally, statistical modeling is used to evaluate the statements made by the seven Republican senators who broke with party lines to convict President Trump in his 2021 impeachment trial. The data shows that criticism of the investigation conducted by the House, as well as characterizing the impeachment proceedings as overly partisan, are the strongest predictors of voting outcome in a Senate impeachment trial.

Understanding how congressional interpretation of the impeachment clause has changed throughout history can shed light on whether impeachment remains an effective tool of executive accountability in the current political climate. I find that while there is a growing trend in the House of Representatives to use impeachment as a political threat, the partisan nature of impeachments does not render Article II Section IV completely ineffective.

Acknowledgements

I am indebted to my thesis advisor, Professor Jeffrey Berry, for encouraging me to undertake this project, and for all of his guidance throughout the research process. Thank you also to my second reader, Professor Brian Schaffner, for taking the time to serve on my thesis committee, and to Professor Richard Eichenberg for leading such an informative and exciting senior thesis seminar.

I am extremely appreciative of Professor Anne Nurse at the College of Wooster for her help directing me towards the correct statistical models to use for my analysis, and for her kindness in taking the time to meet with me to discuss the results.

Finally, thank you to my brother Danny for his over-the-phone tech assistance, and to my parents for providing me with endless support.

Table of Contents

Chapter 1: Introduction.....	4
Chapter 2: Legal Realist and Legal Formalist Approaches to Interpreting the Impeachment Clause.....	10
Chapter 3: Analyzing Politics and Impeachment - Methodology and Research Questions	22
Chapter 4: A Historical Analysis of Impeachment in America.....	28
Chapter 5: A Textual Analysis of Articles of Impeachment in the Case of Presidents and Judicial Officers.....	38
Chapter 6: The Politics of Impeachment - An Analysis of the Seven Republican Senators Who Voted to Convict President Trump.....	53
Chapter 7: Conclusion.....	68
Appendix A: Codebook - A Content Analysis of Conviction Decisions.....	74
Appendix B: Record of Statements on Impeachment.....	82
Works Cited.....	83

Chapter 1: Introduction

*“No point is of more importance than that the right of impeachment should be continued.
Shall any man be above Justice?” - George Mason*

On January 13th, 2021, Representative Jamie Raskin (D-MD) marched from the east wing of the U.S. Capitol building to the Senate Chambers, flanked by eight other members of the House and armed with an article of impeachment against President Donald J. Trump. Rep. Raskin took the podium and read aloud the levied charge of incitement of insurrection, accusing President Trump of provoking the riot at the Capitol on January 6th by making public claims of fraud in the 2020 election. In stating that President Trump “has demonstrated that he will remain a threat to national security, democracy, and the Constitution if allowed to remain in office”, Rep. Raskin set legal proceedings in motion to remove Donald Trump from power just one week before his term was set to expire.¹

This day marked just the fifth time in American history that the House had decided to wage war against the executive by exercising its constitutional authority to indict a sitting president.² Yet the somber event was not unfamiliar to millions of Americans, who had witnessed a similar scene unfold only a year before. The parallels were striking; 363 days earlier, Representative Adam Schiff (D-CA) had made the same walk, stood at the same podium, and presented the same charge of “high crimes and misdemeanors”³ against President Trump (though this time for abuse of power and obstruction of Congress).⁴ The double impeachments of Donald

¹ “Senate Receives Article of Impeachment Against Former President Trump | C-SPAN.Org.” Accessed October 11, 2021. <https://www.c-span.org/video/?c4941363/senate-receives-article-impeachment-president-trump>.

² “List of Individuals Impeached by the House of Representatives | US House of Representatives: History, Art & Archives.” Accessed October 11, 2021. <https://history.house.gov/Institution/Impeachment/Impeachment-List/>.

³ U.S. CONST. art. II, § 4

⁴ “Watch Rep. Adam Schiff Read The Articles Of Impeachment To The Senate | NBC News - YouTube.” Accessed October 9, 2021. <https://www.youtube.com/watch?v=OOn4y7KuQ8I>

Trump were as unsettling as they were unprecedented. Before number 45, only two presidents had ever been impeached, and no president had ever been accused of “high crimes and misdemeanors” twice during a single term.

Since America’s inception, Senators and legal scholars alike have struggled to make sense of the frustratingly (though intentionally) ambiguous language of the impeachment clause of the U.S. Constitution, which 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.”⁵ While treason and bribery are clearly defined in legal statute,⁶ what exactly constitutes “high Crimes and Misdemeanors” has proved to be much more malleable. As stated by then-Congressman Gerald Ford on the floor of the House in 1970, “An impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history.”⁷ His statement is rooted in a broader criticism that alleges impeachment inquiries are nothing more than political theater motivated by one party’s desire to humiliate the other, and remove from power any figure who does not conform to their faction’s set of beliefs or principles. Indeed, President Trump had just barely settled into the Oval Office in 2017 before there were already partisans in Congress seeking to gain support for his immediate removal.⁸ These efforts, while unsuccessful, were unsurprising. Though voicing dissatisfaction with the sitting president has been the custom of

⁵ U.S. CONST. art. II, § 4

⁶ Treason is defined in 18 U.S. Code § 2381 (1948); Bribery is defined in 18 U.S. Code § 201 (1962)

⁷ “History, Law Suggest Impeachment Offers No Clear Roadmap.” Accessed October 9, 2021. <https://www.americanbar.org/news/abanews/aba-news-archives/2019/10/history-law-suggest-impeachment/>.

⁸ In May of 2017, Re. Al Green (D-TX) called for President Trump’s removal from office for obstruction of justice related to his decision to fire FBI Director James Comey in the midst of an ongoing investigation into the possibility of Russian collusion in the 2016 presidential election. <https://www.congress.gov/crec/2017/05/17/CREC-2017-05-17-pt1-PgH4227-5.pdf>. In June of 2017, Rep. Brad Sherman (D-CA) drafted an impeachment resolution on the same grounds. https://sherman.house.gov/sites/sherman.house.gov/files/SHERMA_017_xml.pdf

frustrated congressmen since the beginning of our government, these calls for removal came at a time of extraordinary levels of political polarization in the U.S. Congress. If this hyper-partisanship was driving increased calls from Democrats for Trump’s impeachment, then it was also providing fodder to Republicans to cast these calls aside as misguided attempts at political persecution.

In 2019, President Trump stated that the allegation that he violated his oath of office with regards to the nature of his phone call with Ukrainian President Volodymyr Zelensky “represents an unprecedented and unconstitutional abuse of power” on behalf of Congress.⁹ In 2021, he cast off the impeachment inquiry launched against him as nothing more than a “political witch-hunt.”¹⁰ Over a third of Republican party members agreed he had done nothing wrong.¹¹

While some, like Ford, have lambasted impeachment as overly political to the point that its legal legitimacy is compromised, it is important to remember that the Framers intended for impeachment to be an inherently political process. Alexander Hamilton wrote in *Federalist 65* that “the trial of impeachments... are of a nature which may with peculiar propriety be denominated POLITICAL,” and that “in many cases [impeachment] will connect itself with the preexisting factions.”¹² There is no denying the role that politics plays in presidential impeachment. Though could Hamilton have foretold the intense levels of partisan polarization that have characterized the impeachments of recent history, particularly those of Donald Trump?

⁹ POLITICO. “Trump: Impeachment Process Worse than Salem Witch Trials,” December 17, 2019. <https://www.politico.eu/article/trump-impeachment-process-worse-than-salem-witch-trials/>.

¹⁰ “Trump Celebrates His Acquittal, Says The Impeachment Was Part Of A ‘Witch Hunt’ : Trump Impeachment Aftermath: Updates : NPR.” Accessed October 9, 2021. <https://www.npr.org/sections/trump-impeachment-trial-live-updates/2021/02/13/967700796/trump-celebrates-his-acquittal-says-the-impeachment-was-part-of-a-witch-hunt>.

¹¹ BranchNJ07764 732.571.3400, 400 Cedar Avenue West Long. “Majority Support Trump Impeachment.” *Monmouth University Polling Institute* (blog). Accessed October 11, 2021. https://www.monmouth.edu/polling-institute/reports/monmouthpoll_us_012521/.

¹² “The Avalon Project : Federalist No 65.” Accessed October 9, 2021. https://avalon.law.yale.edu/18th_century/fed65.asp.

And, if not, has hyper-polarization rendered impeachment an insufficient check and balance on the president?

I. Research Questions

This paper addresses the following question: *Is presidential impeachment an effective tool of executive accountability in the current political climate?* Here, executive accountability refers to measures taken to hold the executive responsible for violating his presidential duties, particularly by removal from office. “Political climate” refers to the state of partisan polarization in a given Congress, as evidenced by the party unity score of individual members of Congress.¹³ The contemporary Congress is more polarized than any other in U.S. history, as indicated by historically high instances of party line voting, as well as a sharp rise in the average party unity score among Congressional members.¹⁴

This thesis contributes to an extensive body of existing literature on presidential impeachment by contextualizing and comparing the unprecedented dual impeachments of Donald Trump to the three other failed attempts at convicting a sitting president in American history. Particularly, the role of partisan polarization on impacting a given Senator’s decision to convict on the articles of impeachment presented by the House is discussed.

The paper begins with an in-depth literature review of previous scholarship on interpretations of the impeachment clause. In particular, the schools of legal realism and legal formalism will be considered as approaches to defining “high crimes.”

In exploring this main research question, a set of sub-questions will also be closely examined. The first among these is: *How has Congress’s interpretation of the impeachment*

¹³ Dancey, Logan, and Geoffrey Sheagley. “Partisanship and Perceptions of Party-Line Voting in Congress.” *Political Research Quarterly* 71, no. 1 (2018): 32–45.

¹⁴ *Ibid.*

clause changed over time? As discussed above, interpretation of “high crimes and misdemeanors” is highly vulnerable to political influence; understanding the meaning that members of Congress assign to this ambiguous clause will shed light on whether they approach impeachment as a question that is normative, legal, or both. This section of the thesis begins by examining the historical roots of the Constitution’s impeachment clause in English law. I then analyze the text of the articles of impeachment presented in all five instances of presidential impeachment inquiries in U.S. history (Andrew Johnson (1868), Richard Nixon (1973),¹⁵ Bill Clinton (1998), Donald Trump (2019), and Donald Trump (2021)), and compare them to articles of impeachment brought against other civil officers, particularly judges. Through this type of analysis, I attempt to find a historical thread of what type of behavior is considered by the House to be a “high crime and misdemeanor.”

The final section of this paper features a comparative analysis of votes in the two most recent presidential impeachments, in answering the following question: *To what extent did political polarization influence the impeachments of former President Trump?* Although the 116th and 117th Congresses exhibited unprecedented levels of partisan polarization, their respective impeachments were the most bipartisan in history, with Sen. Mitt Romney (R-UT) becoming the first senator to ever break ranks with his party when voting on conviction in 2020,¹⁶ and seven Republican senators voting to convict in 2021.¹⁷ What accounts for this cross-party consensus on conviction? Given how recent the second of these impeachments is, there

¹⁵ Although former President Nixon was not formally impeached (as he resigned before the House vote on the Judiciary Committee’s approved articles of impeachment), I will be including his impeachment inquiry within the scope of this thesis.

¹⁶ “Mitt Romney Is the First U.S. Senator in History to Vote to Remove a President From His Own Party.” Accessed October 12, 2021. <https://www.newsweek.com/mitt-romney-first-us-senator-history-vote-remove-president-his-own-party-1485961>.

¹⁷ Sprunt, Barbara. “7 GOP Senators Voted To Convict Trump. Only 1 Faces Voters Next Year.” *NPR*, February 15, 2021. <https://www.npr.org/sections/trump-impeachment-trial-live-updates/2021/02/15/967878039/7-gop-senators-voted-to-convict-trump-only-1-faces-voters-next-year>.

does not yet exist much conversation on the implications of having impeached the same president twice. I intend to expand on the existing literature surrounding the first impeachment of President Trump to compare the approaches taken by senators in considering whether to convict in 2020 versus 2021. To do this, I have analyzed the statements made by the seven Republican senators who voted to convict President Trump in 2021, to understand the driving factors behind their decision to split with party lines. The double impeachments provide a unique opportunity to look for any deviations in a Senator's legal analysis of the impeachment clause (as indicated by their publicly made justifications on whether to convict), or alternatively, to see whether any particular interpretation was consistently applied. This question is important in determining if impeachment remains a legitimate tool of executive accountability, or if impeachment proceedings are nothing more than a prop of political theater.

Increasing calls for presidential impeachment in recent history have placed our democratic system in a precarious position. To allow an executive to defy public trust by breaking their oath of office would be to license the exact type of tyranny the Founders sought to protect against. On the other hand, overuse of impeachment powers threatens the integrity of the democratic system by undermining the vote of Americans who put that president in the White House in the first place. Understanding interpretations of the impeachment clause in the twenty-first century is imperative to preserving constitutional principles in an era where the executive is more energetic than ever before.

Chapter 2: Legal Realist and Legal Formalist Approaches to Interpreting the Impeachment Clause

“If the president does something dastardly, the impeachment process is available.” - Associate Justice Brett Kavanaugh

I. Interpreting “High Crimes and Misdemeanors”

The question of how to interpret the phrase “high crimes and misdemeanors” has been the subject of scholarly debate for decades, as commentators attempt to speculate into the minds of the document’s authors by searching for clues in English law and in notes from the Constitutional Convention. Multiple schools of interpretation have emerged from this type of textual and historical analysis, and the existing library of literature on the topic is wide and continuously growing as more instances of impeachment are added to the historical record. At its most broad, the differences in approaches to understanding the impeachment clause can be separated into one of two broad categories: the legal realist approach, and the legal formalist approach.¹⁸ The former describes a normative approach to interpreting law and legal statute that emphasizes the role of social interest and public policy in deciding a particular case.¹⁹ The latter theory prescribes a much more textual approach, divorcing legal interpretation from any moral considerations.²⁰ While I use these schools of thought to organize my discussion of the existing literature surrounding interpretations of the impeachment clause, it should be noted that to ascribe any particular analysis solely to one of these categories is to take the given argument at its most reduced. As will be discussed, there are many contributing factors that complicate each

¹⁸ Though legal realism and legal formalism are established interpretations of law in general, it was the decision of the author to apply and discuss them in the context of understanding the impeachment clause.

¹⁹ “Legal Realism | Wex | US Law | LII / Legal Information Institute.” Accessed November 10, 2021. https://www.law.cornell.edu/wex/legal_realism.

²⁰ LII / Legal Information Institute. “Legal Formalism.” Accessed November 10, 2021. https://www.law.cornell.edu/wex/legal_formalism.

approach, as commentators analyze the text through different angles. In this literature review, I provide a brief overview of what is considered by prominent scholars of presidential impeachment to be the most authoritative analyses of the impeachment clause, as they relate to the aforementioned methods of legal interpretation.

II. Legal Realist Approach

Most commentators agree that the ambiguous phrasing of the impeachment clause necessitates a legal realist approach that hinges on congressional interpretation, though only to a certain degree. Ford, in making his famous statement about the meaning of impeachment being conditional on the passions of any particular House, embodies the legal realist approach at its most basic level. While most commentators are not quite so cynical, many arguments in favor of impeachment as being a political question also stem from the school of legal realism. For instance, while Dr. Akhil Reed Amar criticizes the idea that impeachment is a completely normative process, describing the realist approach as “hardboiled”²¹, he also acknowledges that there is truth to the fact that Congress is ultimately the last word on the impeachment issue.²² As the triers of presidential impeachment, the Senate thus transforms into a “quasi-criminal-quasi-judicial” body that considers a political question within the constraints of judicial trappings.²³

One of the main reasons why a legal formalist approach is not considered to be the most appropriate for use in interpreting the impeachment clause is a lack of historical and legal precedent. There have only been five impeachment proceedings in American history, and the

²¹ Amar, Akhil Reed. “On-Impeaching-Presidents.Pdf.” Accessed November 10, 2021. 300. <https://akhilamar.com/wp-content/uploads/2021/02/On-Impeaching-Presidents.pdf>.

²² Ibid. 301

²³ Broughton, J Richard. “Conviction, Nullification, and the Limits of Impeachment as Politics.” *Case Western Reserve Law Review* 68, no. 2 (n.d.): 42. 387.

Supreme Court has never ruled on what exactly constitutes an impeachable offense for a president. Additionally, the Senate is given exclusive jurisdiction over impeachment, and the decision of whether to convict or acquit a given president is considered to be a *res judicata* ruling (meaning, the decision is final and not subject to judicial review).²⁴ Even so, Raoul Berger argues that while *Baker v. Carr (1962)* (as well as *Nixon v. United States (1993)* which was ruled on after the publication of Berger's book) establishes a political question doctrine that prevents impeachment rulings from being subject to judicial review, this should not mean that Congress is free from any type of judicial enforcement.²⁵ Congress should still be expected to exercise self-restraint just any judge would do so. The question of whether impeachment trials and subsequent rulings *should* be subject to judicial review is a separate topic of debate that falls beyond the scope of this paper.

Although there have been no formal Supreme Court rulings to provide a clear outline of what constitutes “high crimes and misdemeanors”, several Supreme Court justices have weighed in on the question, employing the legal realist approach. In his *Commentaries on the Constitution*, Justice Joseph Story writes that “Not but that crimes of a strictly legal character fall within the scope of the power, (for, as we shall presently see, treason, bribery, and other high crimes and misdemeanours are expressly within it;) but that it has a more enlarged operation, and reaches, what are aptly termed, political offences”.²⁶ Justice Arthur Goldberg similarly called the presidential impeachment process “the most drastic political sanction our constitution

²⁴ Amar, Akhil Reed. “On-Impeaching-Presidents.Pdf.” Accessed November 10, 2021. 300. <https://akhilamar.com/wp-content/uploads/2021/02/On-Impeaching-Presidents.pdf>. 301.

²⁵ Berger, Raoul, *Impeachment: The Constitutional Problems* (Cambridge, Massachusetts: Harvard University Press, 1973), 118-119.

²⁶ Story, Joseph. *Commentaries on the Constitution of the United States : With a Preliminary Review of the Constitutional History of the Colonies and States Before the Adoption of the Constitution*. 4th ed. Boston: Little, Brown and Company, 1873. §762.

provides”.²⁷ Professor Michael Gerhardt in his article *The Lessons of Impeachment History* has analyzed statements such as these, which were made by preeminent legal authorities, and found that the majority of scholars believe that “high crimes and misdemeanors” refers to “political crimes”.²⁸ Gerhardt explains that “political crimes” are quite technical and somewhat paradoxical; contrary to the name, political “crimes” are not necessarily indictable offenses.²⁹ This stems from an understanding of impeachment as a political proceeding in English history, with the defining characteristic of a political offense being a crime committed against the State.³⁰ Notes from the Constitutional Convention indicate that the Framers sought to emulate the political nature of these parliamentary impeachments in their construction of the impeachment clause in the Constitution, as the delegates spoke about an impeachable offense being any deviation from, or abuse of, the powers of the executive office.³¹ Gerhardt identifies a number of factors which determine whether a particular offense may be classified as a “political crime.” Included in his list are the seriousness of the misconduct (as determined by the impact of the offense on the ability of the office to function), the link between the misconduct and the official’s degree of public trust by virtue of the position held, availability of alternative means of redress, and the degree of injury caused to the State, among others.³² The defining feature of an impeachable offense, therefore, is not the nature of the crime itself, but the relationship between the crime and the official duties of the position being held.

²⁷ Goldberg, Arthur J. “The Question of Impeachment.” *Hastings Constitutional Law Quarterly* 1 (1974): 5.

²⁸ Gerhardt, Michael J. “Lessons of Impeachment History.” *George Washington Law Review* 67, no. 3 (1999 1998):

610

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.* 611-612

³² *Ibid.* 624

In a similar approach to Gerhardt, Professor Frank O. Bowman II in his article *Limits on Presidential Impeachment* explores impeachable offenses through a set of interpretive questions, the first of which is whether an impeachable offense must be an actual crime.³³ Like Gerhardt, and corroborating the predominant body of scholarly opinion, Bowman argues that it need not. He reinforces Berger's analysis that the Framers, as students of English constitutional history, most likely intended for "high crimes and misdemeanors" to encapsulate more than just indictable crimes.³⁴ To Bowman, it also boils down to common sense; the Framers certainly were interested in ensuring that the President would perform the duties of his office to the best of his ability, and it follows that the executive should be held accountable for any such dereliction of duty, even if that dereliction does not necessarily amount to an indictable crime. Additionally, at the time the Constitution was ratified, there were not yet any codified federal crimes, aside from those listed in the Constitution (such as treason). This is yet another indicator that the Framers meant the impeachment clause to apply to more scenarios than just indictable crimes.³⁵

Bowman continues to write that, on the flip side, not all criminal conduct is proper ground for impeachment. The first argument he offers in support of this position is a bit questionable; Bowman makes the fair point that there are certainly some infractions or misdemeanors that would, to a reasonable person, never be taken as rising to the level of an impeachable offense (he uses the examples of jaywalking, or hunting without a proper license).³⁶ He also states that there are also some felonies that would fail to meet the same bar, such as

³³ Bowman, Frank O. III, and Stephen L. Sepinuck. "High Crimes &(and) Misdemeanors: Defining the Constitutional Limits on Presidential Impeachment." *Southern California Law Review* 72, no. 6 (1999 1998): 1520.

³⁴ *Ibid* 1525.

³⁵ *Ibid* 1520.

³⁶ *Ibid* 1547.

punching a foreign official in the nose,³⁷ operating a vehicle while intoxicated,³⁸ or counterfeiting a postage stamp.³⁹ At the same time, however, it is fair to say that there is an expectation that any person occupying the office of the presidency is expected to conduct themselves in a professional manner, and that any one of these proposed scenarios would certainly be a violation of that expectation. Using Gerhardt’s argument, it appears this would not be the case, because none of these particular offenses would injure the Republic, and none of them derive from an abuse of presidential power (unless, of course, the president used his executive authority to pull some strings at the Bureau of Engraving to acquire a counterfeited postage stamp). The strongest of Bowman’s arguments on this topic is that there are other methods of accountability, for “a refusal to impeach does not mean a refusal to punish”.⁴⁰ Presidents are still subject to prosecution in the ordinary course of the law. Not discussed by Bowman, but also an alternate remedy, is removal from office through the ballot box. If the people take issue with a president punching a foreign official in the nose because it is not the most professional of actions, then voters can likewise hold the executive accountable by replacing him with someone they consider to better display presidential behavior.

So what, then, constitutes an impeachable crime? Bowman has defined what it is not. He readily admits that when it comes down to it, there is no perfect formula for determining what is, in fact, impeachable. Similar to Gerhardt, he identifies certain factors to be considered when weighing whether a particular action necessitates removal from office, in an attempt to reach a working definition of an impeachable offense. For instance, he cites the relationship between

³⁷ 18 U.S.C. § 112(a) (1998).

³⁸ *See* 18 U.S.C. § 342 (1998).

³⁹ 18 U.S.C. § 501 (1998).

⁴⁰ Bowman, Frank O. III, and Stephen L. Sepinuck. “High Crimes &(and) Misdemeanors: Defining the Constitutional Limits on Presidential Impeachment.” *Southern California Law Review* 72, no. 6 (1999 1998): 1558.

moral gravity and political character as one such factor worthy of consideration.⁴¹ Unlike Gerhardt, however, Bowman does not believe that this relationship necessarily indicates that impeachable crimes must stem from the nature of the political office. Instead, he argues that there are certain private crimes that would certainly be considered impeachable, even though they are unrelated to abuse of the authority of the presidency; easy examples include murder or rape.⁴² Ultimately, Bowman argues that whoever holds the presidential office wields not just political authority, but also moral authority. Any egregious moral misconduct, even if outside the realm of the office itself, thus constitutes a deviation from political character and can be impeachable. Impeachable offenses involve elements of moral gravity and political character that can be incredibly situational and are difficult to define, but do not exclude private crimes.⁴³

While scholars who interpret the impeachment clause through the lens of legal realism thus generally agree that the question of defining “high crimes and misdemeanors” is in part normative, there are nuanced debates about what can be considered a “political crime.” The ambiguity surrounding the working definition of an “impeachable offense” is what opens the door for congressmen to prescribe their own meanings to the phrase. In the absence of legal precedent, and without a clear scholarly consensus, constitutional interpretation is vulnerable to individual biases regarding the nature of the political question.

III. Legal Formalist Approach

In the minority of scholarly literature, though still worthy of note, is the group of commentators who approach the question of interpretation through the lens of legal formalism.

⁴¹ Ibid. 1550.

⁴² Ibid. 1552.

⁴³ Ibid. 1552.

As opposed to the legal realist school of thought, analysts who subscribe to this theory argue that constitutional interpretation of clauses such as Article II Section IV should be wholly derived from textual analysis, devoid of normative considerations. The reasoning for this argument is that the language of the impeachment clause describes the Senate as a court using legal terms; as explained by Dr. Amar, the Senate has the power to “try” “cases” and “convict” a defendant.⁴⁴ The phrase “high crimes and misdemeanors” also sits right next to the explicitly mentioned crimes of “treason” and “bribery”, indicating that impeachable offenses should also be considered to be rooted strictly in law.⁴⁵

Professor Charles Black, in his *Impeachment: A Handbook*, explores the legal formalist approach by identifying ways in which the Framers indicated that impeachable offenses *should* be confined to concrete issues of law. He notes that during the Constitutional Convention, a debate surrounding the language of the impeachment clause arose when George Mason suggested that the phrase “high crimes and misdemeanors” should be substituted with the word “maladministration.”⁴⁶ Madison objected to this by arguing that including the term “maladministration” would mean that the president would serve merely at the pleasure of the Senate. What is interesting then, Black argues, is that by rejecting the word “maladministration”, Madison signals that the phrase “high crimes and misdemeanors” should *not* be taken as synonymous with serving at the pleasure of the Senate, and therefore implies that it should be considered within the confines of the law.⁴⁷ Additionally, the Framers were very insistent on

⁴⁴ Amar, Akhil Reed. “On-Impeaching-Presidents.Pdf.” Accessed November 10, 2021. 301. <https://akhilamar.com/wp-content/uploads/2021/02/On-Impeaching-Presidents.pdf>.

⁴⁵ Ibid. 302.

⁴⁶ James Madison. James Madison's Original Notes on Debates at the Federal Constitutional Convention (September 8, 1787)

⁴⁷ BLACK, CHARLES L., and PHILIP BOBBITT. “The Impeachable Offense.” In *Impeachment*, 27. A Handbook, New Edition. Yale University Press, 2018. <https://doi.org/10.2307/j.ctv5cgb9r.7>

denying Congress the power to issue bills of attainder, which had been used by parliament to essentially declare an individual guilty of a crime without any legal recourse. That Madison and the other Framers displayed such an abhorrence to both bills of attainder and *ex post facto* laws is yet another indicator that they agreed impeachable offenses should be rooted in legal text and precedent.⁴⁸

There are, however, some glaring issues with this type of interpretation. Both Berger and Professor Richard Broughton identify the challenges that arise when impeachment is considered as a strictly criminal proceeding, rather than one that is quasi-judicial. One such challenge is the separation of removal from office from criminal prosecution; if conviction of an impeachment were taken as criminal in nature, then initiating any legal proceedings after a president had been tried on the articles of impeachment brought against him would constitute a violation of the Fifth Amendment ban of double jeopardy, as well as the Sixth Amendment right to a trial by jury.⁴⁹

IV. Politics and Impeachment

Although the Founders intended for the impeachment process to be at least partially political, impeachment proceedings have long faced criticism from government officials and the public alike for being too politically motivated. Is it possible for presidential impeachments to be *too* political? And if so, can impeachment still be considered a viable tool of executive accountability? In his article *The Politics of Impeachment*, Albert Broderick considers these questions and offers a list of scenarios in which politics may be seen as compromising the impeachment process. Such illegitimate political factors include manipulating the impeachment

⁴⁸ Ibid. 29.

⁴⁹ Berger, Raoul, *Impeachment: The Constitutional Problems* (Cambridge, Massachusetts: Harvard University Press, 1973), 82.

process to gain favor during an election cycle, and refusal to impeach when there is strong evidence of an impeachable offense because of perceived damage to the political party.⁵⁰ The majority would most likely agree that for a congressman to allow any of these factors to influence his or her decision to impeach or convict is inappropriate. Yet based on the discussion above, these factors are not quite so cut and dry; for example, how can one tell if a particular politician is choosing not to impeach out of party preservation as opposed to a true belief that the crime at hand does not constitute an impeachable offense? Political manipulation of the impeachment process is thus quite difficult to prove.

Broderick's response to these challenges is to move the question of interpretation out of the hands of legal scholars and government officials, and into the arms of the public. He argues that citizens should play the central political role in an impeachment, and that the decision of a particular congressperson to impeach or convict a president should be a response to public passion or outrage on the subject. Broderick writes that "the citizen's role for voicing his views within the political framework of impeachment of a president is as significant as in exercising his right to vote."⁵¹ In order for citizens to give input, they must be provided with full transparency on the impeachment proceedings and the crime at hand. One fault of Broderick's article is that it does not offer a strong answer to the question of how to measure whether the extent of public outrage is significant enough to support a politician backing presidential impeachment. In any case, suggesting that public opinion should be the most important consideration in any decision whether to impeach or convict is a slightly unconventional argument, though certainly an interesting one that is worthy of further exploration.

⁵⁰ Broderick, Albert. "The Politics of Impeachment." *American Bar Association Journal* 60, no. 5 (1974): 558.

⁵¹ *Ibid.* 558

To address the question of whether partisan politics threaten the legal legitimacy of impeachment proceedings, Professor Richard Broughton employs a novel approach to analyzing the decision of senators on the question of whether to convict. His article “Conviction, Nullification, and the Limits of Impeachment as Politics” reignites contemporary discussion on impeachment as, writing in 2017, he anticipates the question becoming pertinent during the oncoming Trump administration. Perhaps a political prophet, Broughton was right. He takes a close look at the rationale of various senators in historical impeachments through public statements and interviews. He ultimately identifies three prevailing approaches towards convicting on impeachment: *the Anti-Nullification approach*, in which the senator views his/her role in the impeachment trial strictly as a fact-finder to the allegations proposed by the House; *the Independent Interpretation Approach*, where the senator conducts an independent legal analysis that may differ from that of the House; and *the Political Nullification approach*, in which the senator considers conviction not just as a legal question, but also as a normative one.⁵² A general overview of the questions considered by a senator adopting each approach when deciding whether to convict is provided here.

Type of Approach	Questions Considered
Anti-Nullification Approach	Did the President commit the act charged in the articles of impeachment?
Independent Interpretation Approach	Did the President commit the act charged in the articles of impeachment? Does that act reach the level of a “high crime”?
Political Nullification Approach	Did the President commit the act charged in the articles of impeachment?

⁵² Ibid. 302-305.

	<p>Does that act reach the level of a “high crime”?</p> <p>Does the act warrant removal from office or a different type of response?</p>
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While partisanship is least likely to affect the decision of a senator who adopts the Anti-Nullification approach, the most political influence is seen in Political Nullification, as senators who adopt this approach are more likely to consider such factors as public opinion and prospects of reelection when casting their vote. Ultimately, Broughton finds that while the Senate is inherently a political body, the political nature of impeachments is often overstated.⁵³

V. Conclusion

The literature on impeachable offenses encapsulates a broad spectrum of interpretation surrounding the impeachment clause, as the Framers left us with very little guidance on what the phrase “high crimes and misdemeanors” truly entails. While the legal realist school emphasizes the political nature of the proceedings, the legal formalist school argues in favor of an interpretation that is much more rooted in textual analysis and historical context. It is crucial to examine the prevailing approaches to interpretation in the scholarly field to inform our understanding of why the House brings articles of impeachment against a president for any particular crime, and how Senators justify their decisions of whether or not to convict on those articles.

⁵³ Broughton, J Richard. “Conviction, Nullification, and the Limits of Impeachment as Politics.” *Case Western Reserve Law Review* 68, no. 2 (n.d.): 315.

Chapter 3: Analyzing Politics and Impeachment - Methodology and Research Questions

"When a man unprincipled in private life[,] desperate in his fortune, bold in his temper . . . despotic in his ordinary demeanour — known to have scoffed in private at the principles of liberty — when such a man is seen to mount the hobby horse of popularity — to join in the cry of danger to liberty — to take every opportunity of embarrassing the General Government & bringing it under suspicion — to flatter and fall in with all the non sense of the zealots of the day — It may justly be suspected that his object is to throw things into confusion that he may 'ride the storm and direct the whirlwind.'" - Alexander Hamilton

I. Overview

While there exists an extensive library of literature examining the history of presidential impeachments and the controversy surrounding constitutional interpretation of the impeachment clause, the fact that the double impeachments of President Trump are so recent means that not much work has yet been done to contextualize these instances within this broader conversation, or to discuss their long-term impacts. Scholarly interest in impeachment has certainly been revived, and it is necessary to explore how impeachment, as a tool of executive accountability, will continue to operate in the future. This thesis expands on the existing literature by comparing these two impeachments with impeachments of the past, to tease out any precedents that may have been set, and to analyze how constitutional interpretation of the impeachment clause may be changing in the contemporary political climate.

II. Operational Definitions

Before outlining the methodology behind my research, it is useful to define the recurring key terms that my main research question rests on. An operational definition of “high crimes and misdemeanors” has been intentionally left absent from the list, as it has already been established

that there is no single legal definition, and as it is one of the goals of this paper to offer a working definition based on the way senators in the most recent impeachments have interpreted this clause.

Executive Accountability: Each president at his inauguration must swear an oath to “faithfully execute the Office of President of the United States”, and pledge to “preserve, protect, and defend the Constitution of the United States.”⁵⁴ The term “executive accountability” refers to measures taken by the other two branches of government, as well as the public, to hold the president responsible for any deviations from, or violations of, the responsibilities of his office. While impeachment may be the first response that comes to mind, it was meant by the Framers to be a tool of last resort; the unique system of checks and balances was first and foremost intended to temper any actions taken by the executive that may be perceived as a political power grab. Havens and McNeil identify four ways Congress can hold the executive accountable: first, by refusing to pass his legislation; second, by exercising their “power of the purse”; third, by refusing to confirm his appointments; and fourth, by passing a motion of censure.⁵⁵ The public can also hold the executive accountable by voting him out of office if he seeks another term. This paper examines impeachment amongst these alternate methods of executive accountability.

Political Climate: The term “political climate” here refers to the state of polarization in any given Congress (with regards to researching the impeachments of President Trump, my analysis is focused on the 116th and 117th Congresses). While there are multiple ways to determine political climate, the measurement I use here is the party unity vote score, which is defined as “a vote where a majority of Democrats oppose a majority of Republicans. Each

⁵⁴ “Inauguration of the President of the United States | USA.gov.” <https://www.usa.gov/inauguration>.

⁵⁵ Havens, Murray Clark, and Dixie Mercer McNeil. “Presidents, Impeachment, and Political Accountability.” *Presidential Studies Quarterly* 8, no. 1 (1978): 15

member of Congress then receives a party unity score, which is defined as the percentage of time a member votes with her party on party unity votes.”⁵⁶ Essentially, the party unity vote score analyzes the degree of party-line voting that occurs in Congress. In their 2018 report on levels of congressional polarization, Dancey and Sheagley found that the average party unity score among members, as well as the number of party unity votes occurring in Congress, have risen from 60% in the 1970s to 90% in current Congresses, indicating that they are experiencing unprecedented levels of hyper-polarization.⁵⁷

III. Methodology of Main Research Question: An Overview

The main research question of this thesis asks, *Is presidential impeachment an effective tool of executive accountability in the current political climate?* Through this question, I intend to analyze how the political climate of a given Congress affects a senator’s vote on whether or not to convict (this is done by researching a set of more narrow questions, which are discussed in detail below). The purpose of this question is to explore the role that politics plays in impeachment. While it has already been established that impeachment is by nature a political process, given the current state of hyperpolarization in Congress it is worth asking just how extensive a role politics plays. Will increased levels of polarization lead to an increased prevalence of presidential impeachments? To what degree are votes to convict or acquit influenced by a given senator’s politics? When outraged newscasters refer to presidential impeachments as political theater - are they right?

⁵⁶ Dancey, Logan, and Geoffrey Sheagley. “Partisanship and Perceptions of Party-Line Voting in Congress.” *Political Research Quarterly* 71, no. 1 (March 1, 2018): 33. <https://doi.org/10.1177/1065912917722233>.

⁵⁷ *Ibid.*

The hypothesis I propose is that these levels of partisanship in Congress *have* contributed to the increased frequency of presidential impeachments in recent history. However, I believe that the role of partisanship in the *outcomes* of these impeachment proceedings is often overstated and does not invalidate impeachment as an effective tool of executive accountability.

IV. Methodology of Sub-Research Question #1

The first sub-research question asks, *How has Congress's interpretation of the impeachment clause changed over time?* To answer this question, I first conduct a historical analysis of the roots of impeachment in English law and its application to the American system of government. This is followed by a textual analysis of articles of impeachment throughout history, as it is first necessary to understand the nature of the charges that have been brought against a president and other civil officers before looking at how senators vote on a given charge. Because the sample of articles of impeachment brought against presidents is quite small, I compare the articles charged against presidents to those charged against judicial officials, of which there is a more extensive (though still limited) body of documents. To do this, I begin by gathering the original text of articles of impeachment that passed a vote in the House, as well as the articles of impeachment that were drafted in the House Judiciary Committee but were never brought to a vote in the case of President Richard Nixon. To analyze this information, I read through each of the documents and characterized each article by the charge that it brings against the president (for example, obstruction of justice, abuse of power, etc). I look at the nature of these charges as well as the language used to describe each charge and attempt to offer working

definitions for the ones that are overly broad, such as “abuse of power,” by identifying any patterns in how the House interpreted this phrase at a given moment in history.

My hypothesis with regards to this question is that congressional interpretation of the impeachment clause has expanded since its inception to include a wider range of behavior as a “high crime or misdemeanor.” Although it is possible that this is due to increased congressional polarization, it may also be a virtue of the fact that the powers of the executive have undergone extensive expansion throughout history, meaning that what constitutes “presidential responsibilities” for Andrew Johnson may be quite different from the responsibilities of Donald Trump.

V. Methodology of Sub-Research Question #2

The second part of my research compares the outcomes of the double impeachments of President Trump (the first in 2020, and the second in 2021), while also using these instances as a case study in understanding modern congressional interpretations of the impeachment clause. The question to be examined asks, *To what extent did political polarization influence the impeachments of former President Trump?* At the root of this question is a puzzle of political science, which asks *If Congress is more polarized now than ever before, why was the impeachment of President Trump in 2021 the most bipartisan impeachment in U.S. history?* To seek an answer to these questions, I employ a textual analysis of the unique justifications of senators for why they chose to vote on whether to convict. The information gathered includes any public statements made by the senator with regards to impeachment (whether that be a written statement published by their office, or in the absence of any written statements, quotes from interviews on the subject). In addition to their given reasoning, I also examine whether a particular senator was facing any electoral pressures that may have influenced their ultimate

vote. Some of the indicators of electoral pressure include when the senator's term was set to expire at the time of the vote on conviction, whether that senator had indicated that they would be seeking another term, how often the senator had voted on party lines, and what was the public opinion of their voter base with regards to the impeachment. The variables that I look for throughout the course of my textual analysis are outlined in the codebook which can be found in Appendix A.

This analysis focuses specifically on the seven Republican senators who voted to impeach their own party's president in 2021. This list includes: Mitt Romney (R-UT), Richard Burr (R-NC), Bill Cassidy (R-LA), Susan Collins (R-ME), Lisa Murkowski (R-AK), Ben Sasse (R-NE) and Pat Toomey (R-PA). Except for Mitt Romney, who voted to convict on at least one article of impeachment in both impeachments of Donald Trump, the other six senators voted to acquit in 2020 but voted to convict in 2021. The double impeachments thus offer a unique opportunity to examine the rationale given by these seven individuals on their voting decisions in both years, allowing for an analysis of whether their interpretation of the impeachment clause remained consistent or was subject to intervening factors, namely the electoral pressures mentioned above.

Chapter 4: A Historical Analysis of Impeachment in America

*“Experience has already shown that the impeachment it has provided is not even a scarecrow.”
- Thomas Jefferson*

The power of impeachment enumerated to the House, though rarely exercised, exists as one of the mightiest instruments of defense against tyrannical rule. The process allows for a representative body of the people to levy charges against civil officers, holding them accountable for violations of the public trust. While the word “impeachment” is spoken often on the House floor as a political threat against the sitting president by members of the opposing party, the actual procedure of impeaching is quite complex. The proper procedure is as follows: impeachment inquiries into the president originate in the House Judiciary Committee, which must receive approval to launch an investigation by a majority vote in the full House. After conducting the inquiry through public hearings, articles of impeachment are voted on by the Committee; a majority vote pushes the articles through to the full House, which debates and then votes on each article. Once an article is approved by a majority vote, the president has formally been impeached on that charge.⁵⁸ Yet even with so many steps between an accusation and a formal article, it is in the House that the impeachment process is perhaps most vulnerable to political weaponization. To guard against the “fickleness and passion” of Representatives which James Madison warned of, impeachment articles are handed over from the House to the Senate, who will sit as a jury in the subsequent trial.⁵⁹ Unlike in the House, a two thirds vote is needed to convict the president on an article of impeachment, creating a much higher bar for removal from office.

⁵⁸ LII / Legal Information Institute. “Impeachment.” Accessed January 21, 2022.
<https://www.law.cornell.edu/wex/impeachment>.

⁵⁹ “Avalon Project - Madison Debates - June 26.” Accessed January 29, 2022.
https://avalon.law.yale.edu/18th_century/debates_626.asp.

To learn how the understanding of what constitutes an “impeachable offense” in the House has evolved and changed over time, it is necessary to search for precedent among past articles of impeachment. In the nearly 250 years of our nation’s existence, the House has only wielded its impeachment powers against 20 individuals on 21 occasions; 15 judges, 3 presidents, 1 Secretary of War and 1 senator.⁶⁰ Though a small sample size, a thorough analysis of these articles sheds light on what type of behavior has been generally understood to reach the level of a high crime. This chapter begins with a look back at the origins of impeachment in English law, which the Framers studied when incorporating impeachment into our constitutional republic. The history of judicial and other non-presidential impeachments in the United States is then examined in the following chapter, to look for definitional differences between application of the impeachment clause to the president as compared to other civil officers.

I. Origins of Impeachment in English Law

We can attempt to supplement the sparse historical record of impeachments in America by studying the responses of the Framers to the use of impeachment in British Parliament. The concept of impeachment as written in the U.S. Constitution, though new in form, was not novel in concept. Ousting officers for poor behavior is a practice long-established in English law, one that reaches all the way back to 1215 when King John granted the Magna Carta. Its passage was a watershed in Western history; at a time when monarchs were considered accountable only to God, Magna Carta asserted that kings were themselves subject to the rule of law.⁶¹ Though the

⁶⁰ “List of Individuals Impeached by the House of Representatives | US House of Representatives: History, Art & Archives.” Accessed September 13, 2021. <https://history.house.gov/Institution/Impeachment/Impeachment-List/>.

⁶¹ “Who Is Accountable? To Whom? For What? How?,” Keynote Address by Elmer B. Staats, Comptroller General of the U.S. Delivered at the Annual Conference of NCAC/ASPA in Washington, D.C. on Dec. 6, 1979. <https://www.gao.gov/assets/111/1071.pdf>

term impeachment had yet to come into use, Article 61 of Magna Carta calls for the creation of a council of 25 barons for the purpose of ensuring that the King remains faithful to the treaty's terms, at the risk of repercussion through land and property seizure.⁶² In the 14th century, an impeachment process was formalized where the House of Commons would prosecute offenders before the House of Lords, dividing the procedure between both chambers of a bicameral legislature.

The power of impeachment as wielded by Parliament was a revolutionary, though indirect, mechanism of executive accountability. While the King himself was exempt from removal in this manner, impeachment was often utilized to hold his ministers accountable to Parliament. This created an opportunity to take aim at unfavorable royal policies and strike at any absolutist behavior.⁶³ In this way, impeachment from its very inception was weaponized as a political tool used to target loyalists to the King. This was due in part to the fact that impeachment parameters were somewhat ill defined. Frank Bowman identifies six general trends in what was considered by Parliament to be impeachable behavior: treason, ordinary criminality, corruption, incompetence and neglect of duty, betrayal of foreign policy interests, and subversion of the constitution.⁶⁴ It is evident that many of these offenses were broad and depended on situational interpretation. Not even an offense as seemingly concrete as "treason" was easily

⁶²“(61)...If we, our chief justice, our officials, or any of our servants offend in any respect against any man... and the offence is made known to four of the said twenty-five barons, they shall come to us... to declare it and claim immediate redress. If we... make no redress within forty days... the four barons shall refer the matter to the rest of the twenty-five barons, who may distrain upon and assail us in every way possible, with the support of the whole community of the land, by seizing our castles, lands, possessions, or anything else saving only our own person and those of the queen and our children, until they have secured such redress as they have determined upon. Having secured the redress, they may then resume their normal obedience to us.” Archives, The National. “Magna Carta.” The National Archives. The National Archives. Accessed February 24, 2022. <https://www.nationalarchives.gov.uk/education/medieval/magna-carta/>.

⁶³ Berger, Raoul, *Impeachment: The Constitutional Problems* (Cambridge, Massachusetts: Harvard University Press, 1973), 2.

⁶⁴ “British Impeachments (1376-1787) and the Preservation of the American Constitutional Order.” *HASTINGS CONSTITUTIONAL LAW QUARTERLY* 46 (n.d.): 749.

defined; Parliament in the 17th century often found themselves in a state of confusion over the meaning behind certain aspects of the Treason Act of 1351 (25 Edw. III). While the Act explicitly stated crimes that could be considered treasonous, such as conspiring against the life of the king, it also contained a *salvo* which left the definition of treason somewhat open-ended. The *salvo* acknowledged the possibility that certain unprecedented situations may arise, which Parliament may deem to be treasonous despite the lack of its specification in the body of 25 Edw. III.⁶⁵

A clear example of the issues caused by this ambiguity is apparent in the impeachment of Thomas Wentworth, Earl of Strafford, in 1641. A staunch royalist, Parliament found that the Earl's support of expanding the Ship Money Tax (which was widely criticized as an absolutist policy) was a threat to its power of taxation and legislation. In an act which pitted executive power against legislative power, Parliament attempted to impeach the Earl on charges of treason. However, because Wentworth acted not against the King, but rather against the free institution of Parliament, his crime fell beyond the scope of 25 Edw. III. Unable to wield impeachment powers in this instance, Parliament instead issued a bill of attainder, and Wentworth was condemned to death.⁶⁶

Another victim of the Treason Act's poorly phrased legalese is Edward Hyde, the Earl of Clarendon, who was impeached in 1667. Hyde was a staunch royalist who often abused his powers by imprisoning men outside of the kingdom to avoid habeus corpus, and soliciting money from France so as not to have to rely on receiving money from Parliament.⁶⁷ Frustrated

⁶⁵ "And because that many other like cases of treason may happen in time to come, which a man cannot think nor declare at this present time, it is accorded, that if any other case, supposed treason, which is not above specified, doth happen before any Justices, the Justices shall tarry without any going to judgment of the treason, till the cause be shewed and declared before the King and his Parliament, whether it ought to be judged treason or other felony." 25 Edw. III St. 5 c. 2

⁶⁶ Berger, Raoul, *Impeachment: The Constitutional Problems* (Cambridge, Massachusetts: Harvard University Press, 1973), 30-35.

⁶⁷ *Ibid.* 41-42.

by his lack of compliance and complete disrespect for the rule of law, the Commons sought to impeach Clarendon on a general charge of treason, though when the Lords asked for more specification, they seemed unable to do so. As was the case with Wentworth, Hyde's behavior was not explicitly mentioned in the text of 25 Edw. III. This left Parliament scratching their heads. How much leeway did the *salvo* allow for interpreting cases of treason? Should these interpretations be based on existing precedent, or could they concoct a novel definition? Though unable to pin him down on a specific codified crime, the pressure of their prosecution forced Clarendon to flee to France in an act that amounted to banishment.

Overcoming the original confusion sparked by the ambiguity of 25 Edw. III, Parliament saw the opportunity to grasp at declaratory powers that were previously nonexistent. Most notably, they began a practice of declaring certain acts to be treason retrospectively.⁶⁸ Impeachment grew to be an illimitable power wielded by Parliament to cripple the King by way of attacking his cabinet of close officials. A given parliament's understanding of "treason" began to be shaped by political motivations, setting a precedent that the Framers would later seek to address in their own adaptation of English impeachment law.

II. Impeachment in the Colonies

The practice of impeachment rooted in English law crossed the seas with the colonists, who adopted this method of accountability to the institutions of the New World. Like the division of powers in Parliament, the lower house of a colony's legislature passed articles of impeachment, and the upper house was tasked with conviction.⁶⁹ For reasons of practicality

⁶⁸ Ibid. 52.

⁶⁹ Hoffer, Peter C., and N. E. H. Hull. "The First American Impeachments." *The William and Mary Quarterly* 35, no. 4 (1978): 653–67. <https://doi.org/10.2307/1923209>. 656.

(rather than principle, at this point in history), impeachment in the colonies diverged slightly from parliamentary precedent. Most notably, impeachment was stripped of criminal penalty, including capital punishment, to avoid any potential conflicts with royally appointed officials, and thus resulted solely in removal from office.⁷⁰ Private citizens were also exempt from the reach of impeachment, which was now reserved for public authorities alone.⁷¹

Similar to how Parliament used impeachment as a tool to combat unpopular policies handed down from the throne, the colonists very early on began to use impeachment as a measure of holding royal appointees in check. The impeachment of John Harvey, Crown Governor of Virginia, in 1635 revealed the stirrings of colonial independence over a century before the American Revolution. The House of Burgesses brought a list of grievances against Harvey, including frustration with his land grant and trade policies.⁷² Although impeachment was not codified in the Virginia charter, Harvey was forced from his position in what was essentially an impeachment in all but name. In doing so, the House of Burgesses, which was modeled after the English Parliament, was able to claim its own “parliamentary powers” in a similar manner to its predecessor. The act was heavily influenced by politics, as it was chiefly dissatisfaction with the fruits, rather than the means, of Harvey’s governance which motivated his removal from office.

Less than forty years later, Pennsylvania’s 1682 Charter of the Liberties became the first colonial charter to intentionally include and directly reference impeachment powers, specifically for common law felonies and corruption. Article XIX of the Charter provided “That the General Assembly shall continue so long as may be needful to impeach criminals, fit to be there

⁷⁰ Ibid. 714

⁷¹ Ibid. 656.

⁷² Ibid.

impeached, to pass bills into laws, that they shall think fit to pass into laws, and till such time as the Governor and provincial Council shall declare that they have nothing further to propose unto them, for their assent and approbation.”⁷³ This same article was exercised against Chief Justice Nicholas More who, as a physician with no legal training, was granted his position by his close colleague William Penn. Unsurprisingly, More was impeached on charges of corruption, abuse of power, and an utter disregard for all decency in his position.⁷⁴ He was ultimately relieved of his judicial duties.

These, and other, early experiments in impeachment made evident the importance of executive accountability in securing a democratic system of government. Impeachment even came to be used as a tool of independence on the eve of the American Revolution. One such case was that of the impeachment of Peter Oliver, Chief Justice of Massachusetts’ General Court, in 1774. In a legal battle that mimicked the battle for liberty to come, the colonial legislature and the royal governor fought for control of the judiciary by each claiming to be the source of salary for court officials. When Oliver accepted his payment from overseas, the legislature understood this act to be a direct affront to their power, and impeached Oliver so as to send a message that they, and not the crown, were in control.⁷⁵ Colonial legislatures had learned an important lesson from their predecessors in British Parliament; though at this point the King himself was untouchable, his surrounding actors made easy targets for a dissatisfied constituency to demand accountability.

⁷³ “1682: Charter of the Liberties and Frame of Government of Pennsylvania | Online Library of Liberty.” <https://oll.libertyfund.org/page/1682-charter-of-the-liberties-and-frame-of-government-of-pennsylvania>.

⁷⁴ “Its ten articles of impeachment against More, recorded in the Minutes of the Provincial Council during the trial, included charges that he had issued an irregular writ, excluded a man from jury duty, refused to accept a jury verdict, changed a charge, bullied a witness, abused other judges, reversed a lower court decision, missed circuit in the lower counties one session, and acted in contempt of the president and Council.” Hoffer, Peter C., and N. E. H. Hull. “The First American Impeachments.” *The William and Mary Quarterly* 35, no. 4 (1978): 653–67. <https://doi.org/10.2307/1923209>. 664.

⁷⁵ Hoffer, Peter Charles, and N E H Hull. “Impeachment in America, 1635-1805.” *Michigan Law Review* 83 (n.d.): 714.

III. Impeachment at the Constitutional Convention

By the time the Framers first sequestered themselves in the stuffy Pennsylvania State House to discuss the future of American governance, the practice of impeachment as utilized by the colonists had solidified its spot in the forthcoming U.S. Constitution. This decision came despite pushback from Gouverneur Morris and Charles Pinckney, who voiced concerns that the president should not be impeachable while in office. They found that the proposed model granted overwhelming power to a legislature that would “hold themselves as a rod over the Executive, and by that means effectually destroy his independence.”⁷⁶ To this opposition, George Mason summed up the significance of impeachment in his reply that “No point is of more importance than that the right of impeachment should be continued. Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice?”⁷⁷ After being put to a vote, impeachment became codified in the Constitution.

How exactly impeachment would look, however, was up for contentious debate. The Framers drew from the source of impeachment precedent in English law and colonial practice when drafting an impeachment clause that would achieve the goal of effective executive accountability. Certain characteristics remained in place. Parliament’s model of dividing impeachment and its subsequent trial between both chambers of a bicameral legislature was mirrored by the Framers in the Constitution: Article I Section II grants the House of Representatives the “sole Power of Impeachment”, while Article I Section III enumerates the Senate with the “sole Power to try all Impeachments.” This bifurcation was meant to provide an extra layer of protection against legislative abuse of power, particularly where partisanship came into play.

⁷⁶ “Avalon Project - Madison Debates - July 20.” https://avalon.law.yale.edu/18th_century/debates_720.asp#8.

⁷⁷ Ibid.

The Framers did, however, make certain slight but significant modifications to Parliament's impeachment process. Whereas Parliament retained the power to impeach private citizens in addition to public officials, the Framers specified that impeachment was to be reserved for civil officers alone. Additionally, conviction by the House of Lords resulted not only in removal from office, but also in criminal punishment, which sometimes meant a death sentence.⁷⁸ The Framers separated legal consequences from removal from office, meaning that it would not be up to the Senate to issue any sentences in the same manner as the Lords. Perhaps most importantly, as Berger writes, "[The Framers] replaced an unimpeachable King with an impeachable president."⁷⁹ For the first time, the highest holder of office was himself not above the punishment of removal.

With the benefit of being able to reflect upon past usage of impeachment, the Framers set out to remedy some of the roadblocks encountered by their British counterparts when attempting to hold officers accountable. Namely, once it had been decided that treason would continue to amount to an impeachable offense, they sought to clarify the term to avoid the confusion that had characterized the trials of Strafford and Hyde. It was for this reason that the Framers included the text of Article III Section III, which provides a definition of treason that is less open-ended than the *salvo* at the end of 25 Edw. III.⁸⁰ This served the dual purpose of preventing future legislators from declaring retroactive treasons in the same way that Parliament had. Even so, confusion persists from the Framers' incorporation of the phrase "high crimes and misdemeanors", which

⁷⁸ Hoffer, Peter Charles, and N E H Hull. "Impeachment in America, 1635-1805." *Michigan Law Review* 83 (n.d.): 714.

⁷⁹ Berger, Raoul, *Impeachment: The Constitutional Problems* (Cambridge, Massachusetts: Harvard University Press, 1973), 30-35.

⁸⁰ "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court." Article III. S3. C1.1 Treason Clause

exists in the gray realm between specific criminality and general immorality. Just as Parliament was able to expand their own power by means of impeachment, there exists contemporary debate around whether the text of the impeachment clause included proper safeguards against similar behavior from Congress. Indeed, the Framers were aware that the practice of wielding impeachment as a political weapon would persist; as Alexander Hamilton wrote in *Federalist 65*, “there will always be the greatest danger that the decision will be regulated more by the comparative strength of the parties, than by the real demonstrations of innocence or guilt.”⁸¹ To understand just how the language of Article II Section IV has been interpreted and implied, it is paramount to examine what behavior has been deemed impeachable in America’s historical record.

⁸¹ “The Avalon Project : Federalist No 65.” https://avalon.law.yale.edu/18th_century/fed65.asp.

Chapter 5: A Textual Analysis of Articles of Impeachment in the Case of Presidents and Judicial Officers

“The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.” - U.S. Constitution. Art.I, Sec.4

I. Impeachment of Judicial Officers

With history providing a rough roadmap, the House has on 21 occasions exercised its powers under Article I, Section IV. Each set of articles sheds light on what type of behavior a particular House deemed to rise to the level of “high crimes and misdemeanors.” Although each instance stems from unique circumstances, a holistic review of the historical record of articles reveals some general trends regarding what the House has typically taken to be impeachable conduct - and what accusations might be nothing more than politics at play.

A comparative analysis of the historical record of judicial to presidential impeachments is useful in clarifying the bar for impeachment in both types of cases. Article III, Section I allows all congressionally appointed judges to “hold their Offices during good Behaviour.”⁸² Though judges, as civil officers, are included within the purview of Article I, Section IV, the term “good behavior” has introduced a slightly different standard for removal of a judge as compared to a president. Over 75% of all impeachments have been of judges, on an array of charges spanning from corruption and bribery to intoxication on the bench.⁸³ Figure A shows a full catalog of the

⁸² “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 Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.” ArtIII. S1.1 The Judicial Power

⁸³ “List of Individuals Impeached by the House of Representatives | US House of Representatives: History, Art & Archives.” Accessed September 13, 2021. <https://history.house.gov/Institution/Impeachment/Impeachment-List/>.

charges contained in each of the articles of impeachment against judicial officials, as well as the number of individuals who had that particular charge brought against them.⁸⁴

Charge of Articles of Impeachment: Number of Judges Charged

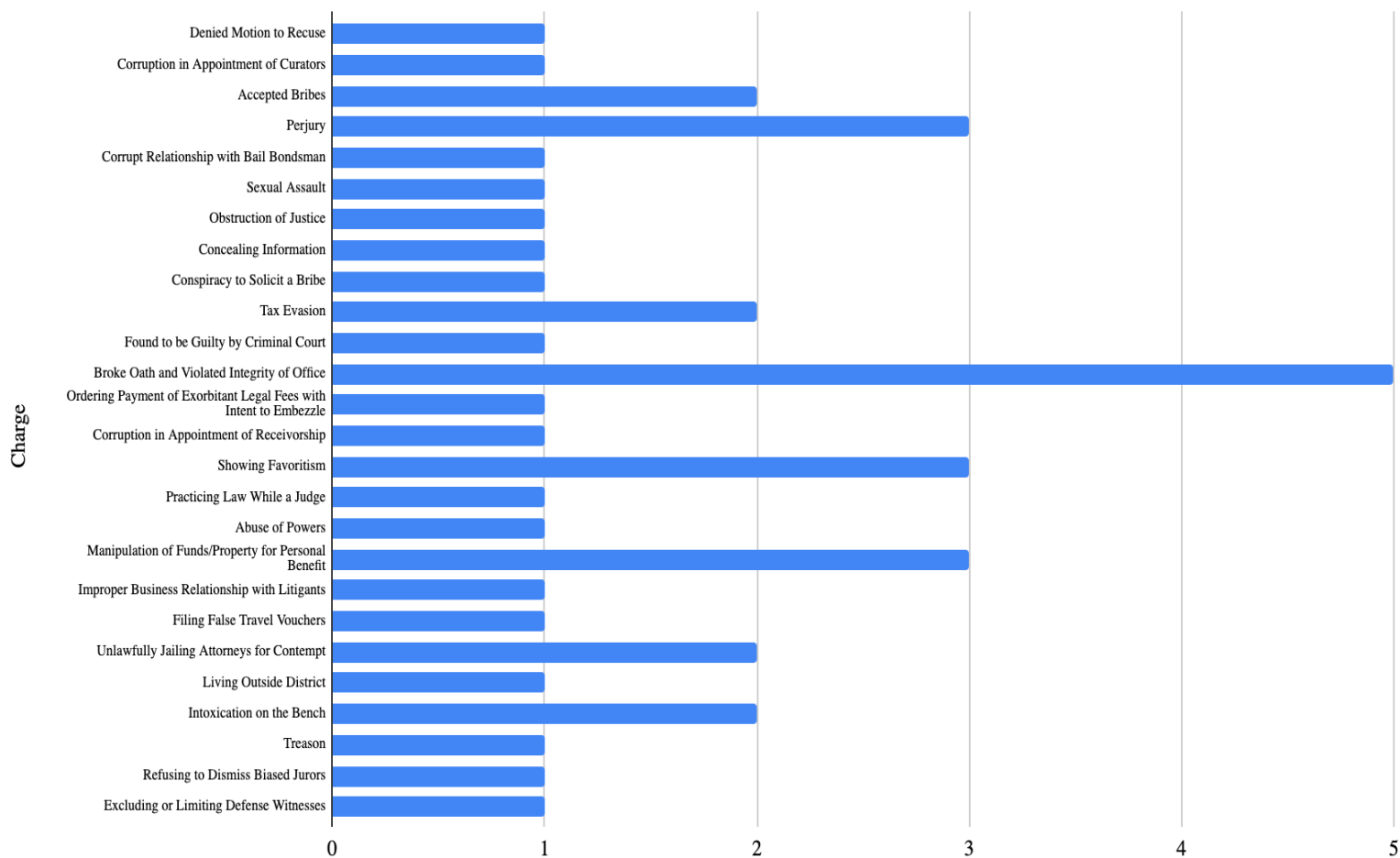


Figure A: Displaying charges brought against each of the 16 judicial officials who were impeached by the House of Representatives⁸⁵

⁸⁴ Note that this graph reflects only the charges that were voted on by the House of Representatives, and does not reflect whether a judicial official was found to be guilty on a particular charge by a vote in the Senate.

⁸⁵ The list of impeached judges includes the following: Judge G. Thomas Porteous Jr, U.S. District Court Eastern District of Louisiana (2010); Judge Samuel B. Kent, U.S. District Court Southern District of Texas (2009); Judge Walter L. Nixon, U.S. District Court Southern District of Texas (1989); Judge Alcee Hastings, U.S. District Court, Southern District of Florida (1988); Judge Harry E. Claiborne, U.S. District Court Nevada (1986); Judge Halsted L. Ritter, U.S. District Court Southern District of

Without question, each of these acts are antithetical to a common sense understanding of “good behavior,” however vague that standard may be. Many of these charges are in fact crimes of a legal nature, such as the unlawful jailing of attorneys, sexual assault, and manipulation of funds and property. There is even an explicit charge of treason, which was levied in 1862 against West H. Humphreys, Judge of the U.S. District Court for Western Tennessee.⁸⁶ The seven articles prepared against Mr. Humphreys included the charges that he had publicly called for Tennessee’s secession during the Civil War, gave aid to the rebellion, and served as a judge for the Confederacy.⁸⁷

Other cases of impeachment are not so clear cut. The most prevalent charge in articles levied against judicial officials is for breaking their oath and violating the integrity of the office they held. Though these articles accompanied other, more specific charges, the House has historically made clear that the appearance of wrongdoing is enough to justify removal from office, regardless of whether misconduct actually occurred. This is evident from the specific language used in these impeachment resolutions. The charges against Walter L. Nixon, for instance, read “by virtue of his office as a judge of the United States District Court for the Southern District of Mississippi, Judge Nixon is required to uphold the integrity of the judiciary, to avoid impropriety and the *appearance of impropriety*, and to obey the laws of the United States.”⁸⁸ Though Mr. Nixon was ultimately found guilty of accepting bribes, a gross violation of

Florida (1936); Judge Harold Louderback, U.S. District Court Northern District of California (1933); Judge George W. English, U.S. District Court Eastern District of Illinois (1926); Associate Judge Robert W. Archbald, U.S. Commerce Court (1912); Judge Charles Swayne, U.S. District Court Northern District of Florida (1904); Judge Mark H. Delahay, U.S. District Court Kansas (1873); Judge West H. Humphreys, U.S. District Court Western District of Tennessee (1862); Judge James H. Peck, U.S. District Court Western District of Tennessee (1830); Associate Justice of the Supreme Court Samuel Chase (1804); Judge John Pickering, U.S. District Court New Hampshire (1803).

⁸⁶ “Hinds’ Precedents, Volume 3 - Chapter 74 - The Impeachment and Trial of West H. Humphreys.”

<https://www.govinfo.gov/content/pkg/GPO-HPREC-HINDS-V3/html/GPO-HPREC-HINDS-V3-23.htm>.

⁸⁷ Ibid.

⁸⁸ Note: Italics added for emphasis. Brooks, Jack B. “H.Res.251 - 101st Congress (1989-1990): Amending the Articles of Impeachment Impeaching Walter L. Nixon, Jr., Judge of the United States District Court for the Southern District of Mississippi,

federal law, it is notable that the House has historically believed that all appointed judicial officials should be free even from the suggestion of unprofessional behavior. It is for this reason that charges of intoxication on the bench or general incompetency (such as in the case of Judge Mark H. Delahay)⁸⁹ have held water against judicial officials, despite being considered forgivable misgivings in the case of presidential behavior.

The idea that judges should be above any inkling of wrongdoing has proven to be problematic when bringing charges in certain instances of impeachment. Harry E. Claiborne, Judge of the U.S. District Court for Nevada, was found by a jury to be guilty of tax evasion. He was slapped with a hefty fine and ordered to serve two years of jail time. Mr. Claiborne, however, had no intentions of relinquishing his seat on the court and even continued to receive his salary of \$78,700 per year while incarcerated. After leaving prison, he promptly returned to his position as though the past two years had been but a brief vacation. Following only a few hours of debate, the House issued four articles of impeachment against Judge Claiborne, attempting to remove him from his post for good. The third article declared that the jury's conviction of Mr. Claiborne was proof in and of itself that he had committed "high crimes" and had broken his oath to serve under good behavior. Though the Senate did not convict Harry Claiborne on this charge, they did find him guilty on the other three articles.⁹⁰ The House's reference to Mr. Claiborne's conviction raises interesting questions about possible infringements of Fifth Amendment protections against double jeopardy. Just two years later in 1988, Judge Alcee Hastings of the U.S. District Court for Southern Florida found himself in a very similar

of High Crimes and Misdemeanors." Legislation, October 5, 1989. 1989/1990. <https://www.congress.gov/bill/101st-congress/house-resolution/251>.

⁸⁹ Constitutional Law Reporter. "Lincoln Ally US District Judge Mark W Delahay Impeached for Intoxication," April 25, 2017. <https://constitutionallawreporter.com/2017/04/25/historical-mark-w-delahay/>.

⁹⁰ "U.S. Senate: Impeachment Trial of Judge Harry E. Claiborne, 1986." <https://www.senate.gov/about/powers-procedures/impeachment/impeachment-claiborne.htm>.

position - although this time, the charge at hand was extortion and bribery, and Judge Hastings was acquitted by a jury. Although Judge Hastings was found to be not guilty, the House decided to bring articles of impeachment against him on the very same charges. Judge Hastings filed a Motion for Dismissal, claiming a second trial in the Senate would amount to “double jeopardy.” His motion was denied 92-1. The Senate found him to be guilty on eight of the eleven proposed articles, and Mr. Hastings was removed from his post.⁹¹

In both cases, appearance of misconduct was the driving force behind impeachment. The mere potential of impropriety was enough for the House to bring charges against each of these individuals. As we will see from an analysis of impeachment resolutions against presidents, the “appearance” standard has failed to be considered applicable in the same way. There exists, then, a clear difference between committing a “high crime” and violating an oath to conduct oneself on “good behavior.” George Mason’s proposal that “maladministration” should be worthy of impeachment may not have been included in the text of Article I, Section IV, but it remains a key factor when determining whether a judicial appointee should be removed.

While some charges reflect crimes of a legal nature, it is clear that others may be classified as what Gerhardt has coined to be “political crimes.”⁹² Judge John Pickering, Judge of the U.S. District Court for New Hampshire, and Samuel Chase, U.S. Supreme Court Justice, were both targets of impeachment driven by partisan interests. At the time of his inauguration President Thomas Jefferson inherited a judicial system that had been packed with Federalist judges. The Judiciary Act of 1801 created 16 new judge positions, which the Federalist Congress not surprisingly filled with strong Federalists. Hindered by the courts, Jefferson went on the

⁹¹ “U.S. Senate: Impeachment Trial of Judge Alcee L. Hastings, 1989.” <https://www.senate.gov/about/powers-procedures/impeachment/impeachment-hastings.htm>.

⁹² Gerhardt, Michael J. “Lessons of Impeachment History.” *George Washington Law Review* 67, no. 3 (1999 1998): 610

attack. He began by replacing court marshals with Republicans, and at his urging the Judiciary Act was repealed the following year. Because the Constitution prevented him from dismissing any federal judges, he attempted to find a loophole by way of impeachment. When Judge Pickering failed to resign under Jefferson's pressure, the President saw an opportunity for testing the limits of impeachment power as a political tool - he argued for the House to remove Pickering from the bench.⁹³ The subsequent impeachment articles accused Pickering, a known alcoholic, of being "a man of loose morals and intemperate habits."⁹⁴ He was convicted in the Senate on a party line vote. Almost exactly one year later, Justice Samuel Chase fell victim to the same scheme. Again, President Jefferson urged Jeffersonians in the House to exercise their impeachment powers to cleanse the judiciary of Federalist relics of the Adams administration. In 1804, Chase was impeached on charges of refusing to dismiss biased jurors and limiting defense witnesses in politically sensitive cases.⁹⁵ This effort, unlike the one against Judge Pickering, failed. At least 6 Jeffersonian Republicans in the Senate voted "not guilty" alongside the 9 Federalists in the Senate. Thankfully, the Senate stomped on the notion that partisan pressure could result in removal from office before it could become precedent (as the impeachments of Justice Chase and Judge Pickering were the first two judicial impeachments on record). Politics thus played a significant role in the process of impeachment, even if the partisan efforts failed with an acquittal in the second chamber.

Not all judicial impeachments can be said to have been politically motivated. House votes on the articles brought against judicial officials were unanimous, or were dissented by five or

⁹³ "Thomas Jefferson: Domestic Affairs | Miller Center," October 4, 2016. <https://millercenter.org/president/jefferson/domestic-affairs>.

⁹⁴ "John Pickering Remembered Most for His Impeachment," April 4, 2017. <https://constitutionallawreporter.com/2017/04/04/john-pickering-federal-judge-impeachment/>.

⁹⁵ "U.S. Senate: Impeachment Trial of Justice Samuel Chase, 1804-05." <https://www.senate.gov/about/powers-procedures/impeachment/impeachment-chase.htm>.

fewer representatives, in over one third of impeachment cases. This may be the case because many of the impeachment charges were criminal in nature. In these instances, the question of impeachment becomes much more black and white, particularly as violations of the law are generally seen as antithetical to “good behavior.” These unanimous votes indicate that there are certain instances when there remains little to no doubt about whether a particular type of conduct does rise to the level of “high crimes and misdemeanors.” Such charges include tax evasion (Harry E. Claiborne), perjury (Alcee Hastings), sexual assault (Samuel B. Kent), and accepting bribes (Thomas Porteous, Jr.), among others. There are also impeachments that have set precedents for what is *not* considered to be impeachable behavior. Harold Louderback, Judge of the U.S. District Court for Northern California, was charged with five articles of favoritism in the appointment of bankruptcy receiverships, as well as a general charge of bringing the court into disrepute.⁹⁶ He was impeached by the House on a vote of 183 - 142, showing a lack of consensus as to whether these articles were just. Louderback was later acquitted by the Senate with votes that strayed from strict party lines, revealing that his behavior was not taken by the Senate to meet the standard of impeachable behavior. The case of Judge James Peck is another example of the Senate disagreeing with the House on what type of conduct justifies removal. After the lawyer Luke Lawless published an anonymous criticism of one of Judge Peck’s rulings, the judge ordered him to be imprisoned for 24 hours and disbarred for 18 months. The House therefore charged Peck with abuse of the contempt power. Shockingly, the Senate acquitted Judge Peck on all charges, questioning whether one account of gross misuse of power justifies removal.⁹⁷ Though his acts appear to have been blatantly unjust, it is important to note that this

⁹⁶ “The Impeachment of Judge Harold Louderback | US House of Representatives: History, Art & Archives.” <https://history.house.gov/Historical-Highlights/1901-1950/The-impeachment-of-Judge-Harold-Louderback/>.

⁹⁷ Hinds’ Precedents, Volume 3 - Chapter 73 - Impeachment and Trial of James H. Peck.” Accessed April 22, 2022. <https://www.govinfo.gov/content/pkg/GPO-HPREC-HINDS-V3/html/GPO-HPREC-HINDS-V3-22.htm>.

case was just the fourth impeachment on the historical record, and only the third judicial impeachment in total. This particular outcome seems to be an outlier from the following impeachment cases, as this type of behavior would almost certainly have been punished by removal by the standards of any other Congress.

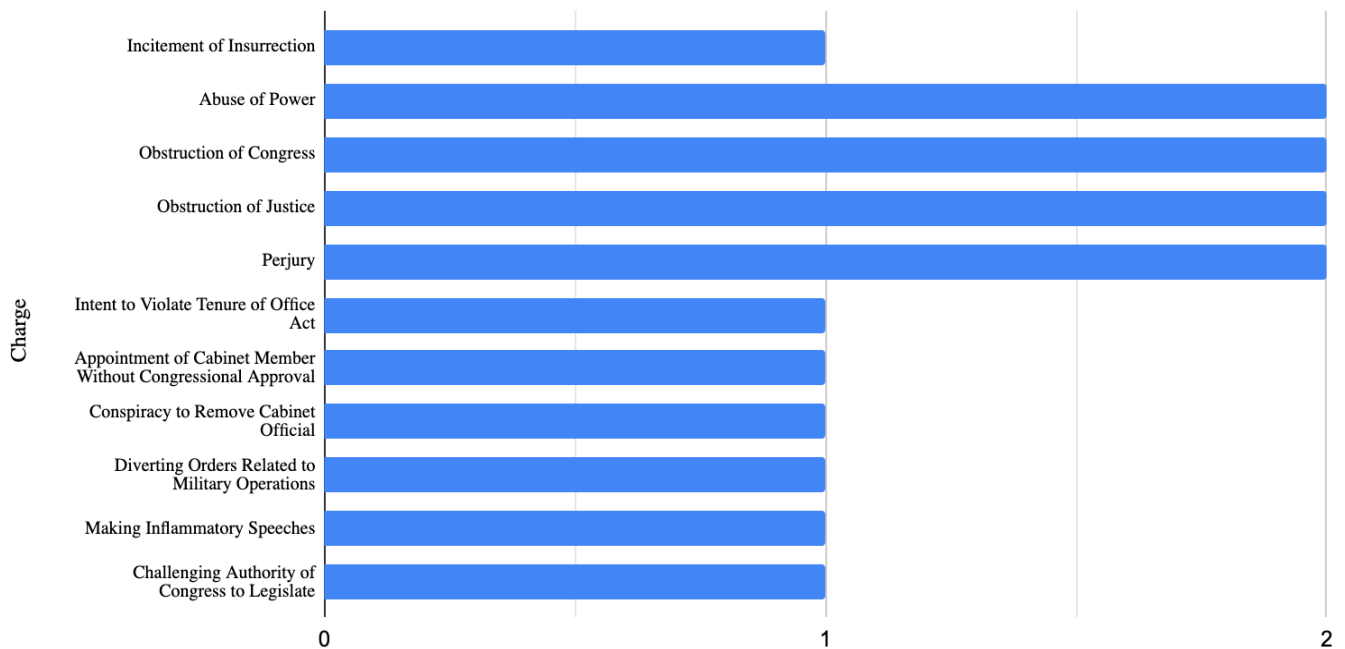
The historical record of judicial impeachments reveals certain patterns that are useful in comparison to presidential impeachments. Removal of judicial officials hinges on a bar that is set slightly lower than that of the executive; impropriety, and the appearance of impropriety, are both punishable by removal. To impeach a judge, a particular House must prove that the individual in question acted in a manner that did not constitute “good behavior” - whether the wrongful behavior rises to the level of a high crime or misdemeanor is a question left to the Senate, who has not been particularly consistent in its convictions. Judicial impeachments have been unique in their ability to float above partisan interests, but this may be an exception and not the rule. There have still been examples of politically motivated impeachments, regardless of whether those attempts were ultimately successful in their partisan aims. Understanding the bar for judicial impeachments will help to shed light on the standard for “high crimes and misdemeanors” of the executive, and the following section seeks to compare the two.

II. Impeachment of Presidents

Compared to the 15 impeachments of Article III judges, there have been just 4 sets of articles charged against sitting presidents - Andrew Johnson, William Clinton, and Donald Trump (twice). Due to the lack of data resulting from the rarity of presidential impeachments, discussion in this section includes the articles of impeachment which were adopted by the House

Judiciary Committee against President Richard Nixon, but were never voted on by the full House due to Nixon’s resignation from office. Figure B below shows the charges which were included in the articles of impeachment against these five presidents.

Charge of Articles of Impeachment: Number of Presidents Charged and the number of Total Articles Issued for the Charge (Among all Presidents)*



* Including President Richard Nixon

Figure B: Displaying charges brought against each of the 3 presidents who were impeached by the House of Representatives, and the articles drafted in the case of Richard Nixon

A cursory glance at this chart reveals that the record of charges brought against presidents is significantly fewer than their judicial counterparts, and the nature of the articles themselves is much less varied. Charges related to the appearance of impropriety, such as intoxication, are absent from the record of presidential impeachments - the exception being one of the eleven articles brought against President Johnson, which accused him of making speeches “with a loud

voice, certain intemperate, inflammatory, and scandalous harangues.”⁹⁸ Not surprisingly, this charge did not pass the vote in the Senate (if loud and inflammatory speeches reached the bar of “high crimes,” then almost every politician since 1868 would have found themselves at risk of removal). Presidents, unlike judges, are not appointed for life, and the “good behavior” standard for removal does not apply. Instead, presidents are at the mercy of the population of voters, who decide whether an executive is worthy of reelection. In this way, the American people are themselves the most effective tool of executive accountability. With this in mind, the Framers anticipated the removal of a president only in the most extreme circumstances.

Despite these differences, there does exist some significant overlap between the type of misconduct deemed impeachable by the House with regards to the behavior of judges and the behavior of presidents. Charges such as abuse of power, obstruction of justice, and perjury have been levied in both types of impeachments. What the Senate has chosen to do with these charges, however, has been inconsistent. Take the perjury charge, for example. Judge Walter Nixon was impeached on two accounts of perjury, and one account of concealing conversations. The Senate convicted, and he was removed from office.⁹⁹ Nine years later, in the next impeachment on record, President William Clinton was also charged with perjury. Although the Senate had found perjury to be a high crime in the case of Nixon, President Clinton was acquitted on the same charge.¹⁰⁰ While each case had its own circumstances and the two should certainly not be taken as synonymous, it is notable that the Senate adopted a different approach towards the question of whether perjury could be considered a high crime. In a statement justifying his decision to acquit

⁹⁸ “Andrew Johnson’s Impeachment and the Legacy of the Civil War | Miller Center,” October 15, 2019.

<https://millercenter.org/the-presidency/impeachment/andrew-johnsons-impeachment-and-legacy-civil-war-lecture>.

⁹⁹ Brooks, Jack B. “H.Res.251 - 101st Congress (1989-1990): Amending the Articles of Impeachment Impeaching Walter L. Nixon, Jr., Judge of the United States District Court for the Southern District of Mississippi, of High Crimes and Misdemeanors.” Legislation, October 5, 1989. 1989/1990.

¹⁰⁰ “H. Rept. 105-830 - IMPEACHMENT OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES.” Legislation. 1997/1998. <https://www.congress.gov/congressional-report/105th-congress/house-report/830/>.

President Clinton, Senator Ben Campbell (R-CO) stated “It is not enough that I deplore the President’s conduct. It is not enough that I question his morals, his character or his veracity. The Constitution does not permit his removal for these reasons because, without proof of more, they do not constitute “high crimes.”¹⁰¹ This statement, and others like it, reveal that the appearance of impropriety is generally not applied to presidents in the same way that judges can be held accountable for the mere existence of questions surrounding their conduct.

It can also be argued that politics has a heavier hand in presidential impeachments than judicial ones. Unlike with judicial impeachments, there has never been a unanimous vote on articles levied against a president. Every vote has been on strictly, or nearly strictly, party lines. Such has been the case from the first time Article I Section IV was invoked against a president - in the case of Andrew Johnson, each of the 11 articles brought against him passed on a perfect partisan divide. The main accusation against Johnson for violating the Tenure of Office Act was quite politically charged. Johnson had angered radical Republicans in Congress by being soft on Reconstruction, including pardoning Confederate generals.¹⁰² In rebuke, Congress passed the Tenure of Office Act, which required congressional approval of cabinet dismissals in addition to appointments, over his veto.¹⁰³ When Johnson fired Secretary of War Edwin Stanton for criticizing his policies, Congress took this as an opportunity to attempt the impeachment of Johnson.¹⁰⁴ On a vote of 126 to 47, Johnson was impeached without the House holding any

¹⁰¹ “CLINTON’S ACQUITTAL; Excerpts: Senators Talk About Their Votes in the Impeachment Trial - The New York Times.” <https://www.nytimes.com/1999/02/13/us/clinton-s-acquittal-excerpts-senators-talk-about-their-votes-impeachment-trial.html>.

¹⁰² “Andrew Johnson’s Impeachment and the Legacy of the Civil War | Miller Center,” October 15, 2019. <https://millercenter.org/the-presidency/impeachment/andrew-johnsons-impeachment-and-legacy-civil-war-lecture>.

¹⁰³ “The Tenure of Office Act, 1867.” https://www.ruhr-uni-bochum.de/gna/Quellensammlung/05/05_tenureoffice_1867.htm.

¹⁰⁴ President Johnson replaced Edwin Stanton with General Ulysses S. Grant, who resigned the position. Stanton was reinstated by Congress, though Johnson ignored their selection and instead appointed Brevet Major General Lorenzo Thomas. Stanton sued Thomas for his job, and Congress subsequently impeached Johnson for his overstep of power.

hearings.¹⁰⁵ Though he blatantly violated the law, Congress had been looking for an excuse to remove Johnson from the moment he strayed from President Lincoln's agenda. 1868 was an election year, but the House made it clear that they would not wait that long for the chance to free the executive office of Johnson - perhaps there was also some worry that, due to his ties to Lincoln, Johnson may be voted into another four years. Regardless, the unpopular Johnson failed to secure the Democratic nomination.

The infusion of politics into the process of drafting articles against a sitting president makes it difficult to extrapolate what the House truly considers to be "high crimes." A look at Figure B shows that there are some very specific charges, such as Andrew Johnson's violation of the Tenure of Office Act. There are also more general charges, such as a blanket accusation of "abuse of power" (referencing President Trump's quid pro quo with Ukraine, and President Nixon's use of federal agencies to harass his political enemies). Of course, every article brought against a president is technically an accusation of abuse of power, regardless of the characterization of the article as narrow or broad. For this reason, the specific language used to describe an article does not have a significant bearing on the charge itself. It is possible that the broad charges of "abuse of power", "obstruction of justice", etc. is simply shorthand, or even a clever rhetorical tactic used by politicians - when the public hears that the House has charged a president with "abuse of power" as opposed to something technical such as "violation of the Tenure of Office Act", it is much easier to signpost that the president has done something wrong. If you read those two charges aloud, one certainly sounds much stronger and more offensive than the other, even though both describe executive misconduct.

¹⁰⁵ "Andrew Johnson's Impeachment and the Legacy of the Civil War | Miller Center," October 15, 2019. <https://millercenter.org/the-presidency/impeachment/andrew-johnsons-impeachment-and-legacy-civil-war-lecture>.

Although politics is clearly involved in the impeachment process, it does have its limits, as the Framers intended. The House does not simply throw charges at the wall to see what sticks; a presidential impeachment goes through a meticulous process of approval by the House Judiciary Committee, hours of inquiry hearings (though this is not always the case), and a vote on each of the proposed articles. Every article brought against a U.S. president is rooted in a serious controversy over executive behavior, especially in scenarios where the Constitution does not provide an immediate answer to the question of misconduct at hand. It also appears that whether the impeachment was taking place in an election year had no clear bearing on whether the House decided to impeach. The impeachments of Andrew Johnson (1868) and Donald Trump (2020) were the only impeachments that took place during an election year.

There is, however, a growing trend in the number of calls for impeachment on the House floor. Just as there were partisans on the left who had articles at the ready when President Trump took office, partisans on the right have similarly targeted Trump's successor, President Biden. Just one day after President Biden was inaugurated, Representative Marjorie Taylor Greene proposed articles charging him with "endangering the security of the United States and its institutions of government", among other accusations.¹⁰⁶ Many have dismissed these attempts at impeachment as political stunts, accusing the sponsors of the resolution of virtue signaling their disapproval with the understanding that the articles do not actually hold water. At the same time, it cannot be ignored that calls for impeachment are themselves becoming a political tool. They allow a representative to show their constituents that they are "fighting the bad guys" in government. The number of proposed articles of impeachment has skyrocketed in the Biden and

¹⁰⁶ Greene, Marjorie Taylor. "H.Res.57 - 117th Congress (2021-2022): Impeaching Joseph R. Biden, President of the United States, for Abuse of Power by Enabling Bribery and Other High Crimes and Misdemeanors." Legislation, March 5, 2021. 2021/2022. <https://www.congress.gov/bill/117th-congress/house-resolution/57>.

Trump administrations. Figure C shows the number of proposed impeachment resolutions that were introduced on the House floor in the past 25 years.

Proposed Impeachment Resolutions in the House of Representatives (1996 - 2021)

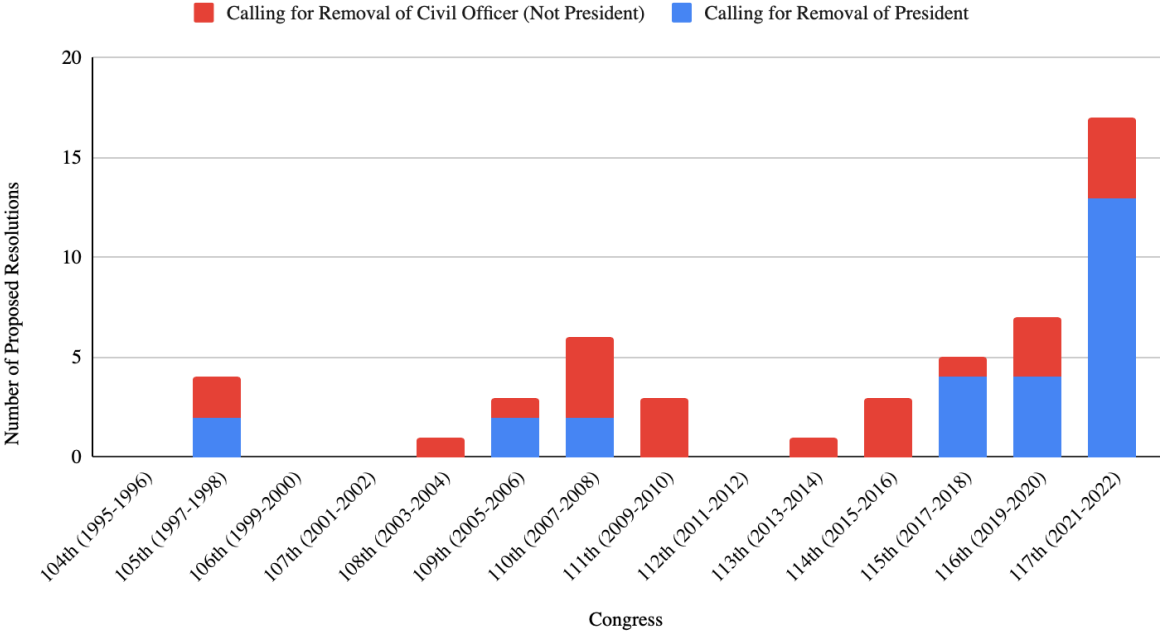


Figure C: Data from the library of legislation found on congress.gov

There is a clear upward trend in calls for impeachment. During his four years in office, 14 sets of articles were levied against President Trump, all from members of the opposing party. After a year in office, President Biden has already had 7 resolutions calling for his impeachment introduced on the House floor (none of which have actually been taken to a vote). In the contemporary congress, the word “impeachment” has been weaponized as a political tool. The more partisans make politically motivated accusations and call for the removal of presidents they simply dislike, the more Article I, Section IV loses its respect and authority as a legitimate tool of executive accountability.

III. Conclusion

An analysis of the record of impeachment articles reveals that the House has historically decided to impeach whenever they believe the president abused the role of his office. Whether or not that abuse harmed the American public is always considered, but is sometimes a gray area (one could argue that, although he made a mockery of Congress and violated the law, no American was particularly impacted by President Johnson's noncompliance with the Tenure of Office Act). It appears that instead, the House has found that the harm done to citizens comes from the way executive misconduct erodes the integrity of the Oval Office, and democracy itself. This is different from the mere "appearance of impropriety" as was characteristic of some judicial officials, but rather a belief that irreparable damage will be done by bringing the presidency into disrepute, perhaps by setting dangerous precedent through their behavior.

Chapter 6: The Politics of Impeachment - An Analysis of the Seven Republican Senators who Voted to Convict President Trump

“The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried the Chief Justice shall preside; And no Person shall be convicted without the Concurrence of two thirds of the Members present.” U.S. Constitution Article 1, Section 3, Clause 6

The double impeachments of President Trump in 2020 and 2021 have created a rare opportunity to explore when and why the conviction of a president may transcend political boundaries. While there have been instances of members of the opposite party joining in a bipartisan vote to acquit a president (as occurred during the impeachment trials of both President Johnson and President Clinton), only in the case of the Trump impeachments have members of the president’s party joined the vote to convict. Figure D illustrates the breakdown of votes by party on each of the individual articles charged against a president.

Senate Votes to Convict in Presidential Impeachment Trials by Party

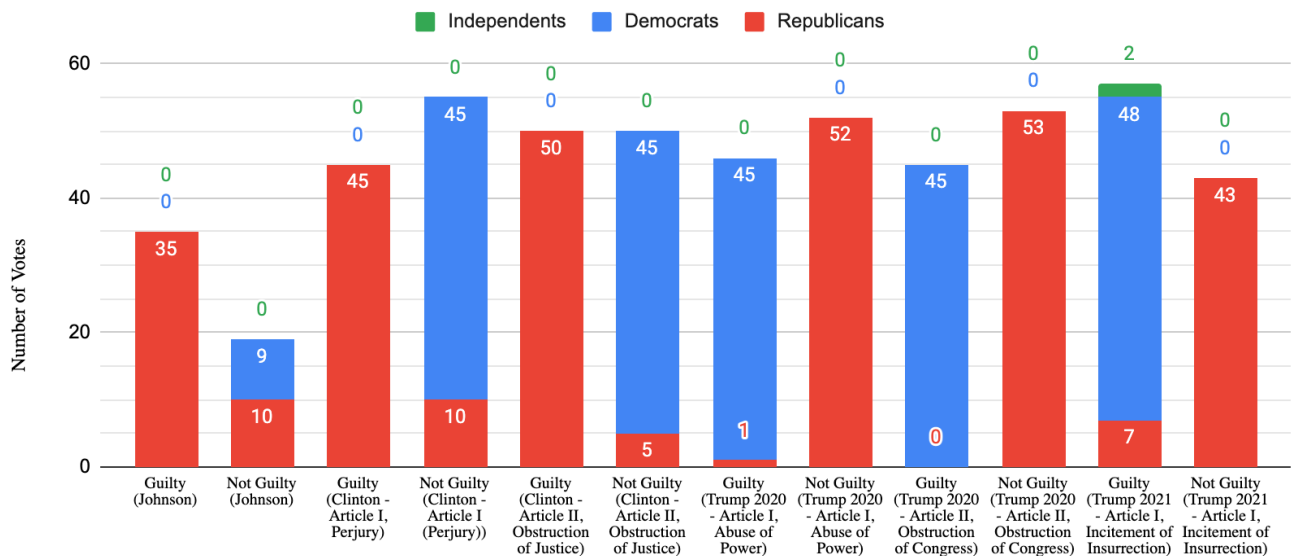


Figure D

The vote in 2020 on the abuse of power charge broke precedent by being the first instance of acquittal votes *not* being bipartisan. This trend held constant for each of the subsequent votes on articles in Trump impeachments - not a single Democrat broke party lines to declare Trump *not* guilty. As discussed in earlier chapters, unprecedented levels of partisanship in Congress, matched with particularly pointed vilification of the President, can perhaps explain the unwillingness of any Democrat to vote to acquit. What these factors do not explain, however, is why, in the case of two of the three articles against President Trump, Republican senators chose to break party lines in the opposite direction by casting their votes to convict. This type of voting behavior stands in direct contradiction to what we might expect given the established levels of partisanship in the Senate. This section seeks to understand the reasoning behind these Republican votes (1 vote in the case of the abuse of power charge in 2020, and 7 votes in the case of the incitement of insurrection charge in 2021). If these particular votes were truly free from partisan influence, then it is possible that they may provide some insight as to what type of presidential behavior is indubitably worthy of removal from office.

As the nature of this analysis calls for speculation into the mindset of each Senator when casting their vote, the closest we can come to understanding their reasoning on an objective level is by evaluating the public statements they made in justification of their decisions to acquit and convict. There were six Republican Senators who voted to acquit President Trump on all charges in 2020, and then voted to convict in 2021: Richard Burr (R-NC), Bill Cassidy (R-LA), Susan Collins (R-ME), Lisa Murkowski (R-AK), Ben Sasse (R-NE), and Pat Toomey (R-PA). In 2020, Mitt Romney (R-UT) became the first Senator to vote to convict a president of the same party on the abuse of power article (though he voted to acquit on the obstruction of Congress charge). He then voted to convict President Trump again in 2021. Because the double impeachments allow us

to control for the particular president in office, and because they provide us with a larger sample size of votes for each Senator, we can look for insight as to what particular factors or behavior had the most weight when interpreting whether to convict in these instances.

To do this, I collected all available statements made by each of these Senators with regards to explaining their votes in each trial.¹⁰⁷ These statements range from press releases to speeches delivered on the Senate floor, or interviews given on radio and television. A full list of the statements analyzed can be found in Appendix B. Each statement was coded for the mention of specific factors used as justification for their vote. Such factors include reference to impeachments of the past, criticizing or praising the investigation conducted by the House, and referring to the impeachment proceedings as overly political or partisan, to name a few. The full codebook with the exhaustive list of variables can be found in Appendix A.

Following the initial coding for all variables, a logistic regression was conducted to determine the extent to which each variable influenced a Senator's decision to acquit or convict.¹⁰⁸ The independent variable was the type of reasoning given for justification of their vote, and the dependent variable was the vote itself. As it is an assumption of logistic regression that each variable is independent and not correlated to another variable, a correlation matrix was modeled which revealed that there were no instances of multicollinearity (highly correlated variables). Three of the variables were found to have a statistically significant relationship to a Senator's vote, each of which are discussed in detail throughout the following section: criticizing the House investigation, characterizing the impeachment proceedings as overly political or

¹⁰⁷ Although a thorough search for statements was conducted by consulting each Senator's website, CSPAN, YouTube, and major news media sites, it is possible that there exists other statements that were not discovered and examined. The main sentiment of each senator's vote is captured in the available statements.

¹⁰⁸ A logistic regression was used because of the binary dependent variable of vote outcome (0 = acquit and 1 = convict)

partisan in nature, and criticizing the actions of President Trump. The results of the logistic regression can be found in Figure E below.

Justification for Vote to Convict

Predictor	Odds Ratio	SE Coef	Z	P Value	95% Confidence Interval
HINV (Criticism of House Investigation)	14.625	14.165	2.77	0.006**	2.19 - 97.61
SLEG (Legal Argument Re: Prosecution's Case)	1	(omitted)			
TEXT (Reference to Constitution)	1.182	1.277	0.15	0.877	.142 - 9.826
ORIG (Reference to Founding Fathers)	1.2	1.11	0.20	0.843	.197 - 7.311
OPDEF (Offers definition of "high crimes")	.45	.379	-0.95	0.344	.086 - 2.35
ROLE (Discusses role in the trial)	.296	.237	-1.52	0.128	.062 - 1.419
POLI (Calls impeachment proceedings overly partisan)	8.99	7.937	2.49	0.013*	1.598 - 50.691
HIST (Refers to past impeachments)	3.429	2.922	1.45	0.148	.645 - 18.217
CHAR (Includes character attack)	1	(omitted)			
CRIT (criticizes Trump)	0.833	.0979	-2.11	0.034*	.008 - .833

Figure E: Logistic Regression of Justification for Vote to Convict

I. Criticism of House Investigation (HINV)

Out of the 28 statements analyzed amongst the 7 senators during the two impeachments, there were a total of 11 references to the impeachment investigation conducted by the House being flawed or problematic (a variable which was coded as HINV). 10 of these references were made during the 2020 impeachment, in which all of the Senators who made these statements (Burr, Toomey, Murkowski, Sasse, Collins, and Cassidy) voted to acquit, appearing in 71% of statements explaining a vote of not guilty. In only one instance that a Senator criticized the House investigation did that Senator vote to convict - in her speech on February 13, 2021, Sen. Susan Collins referred to the proceedings as a “snap impeachment” in which “the House failed to hold hearings, conduct an investigation, and interview witnesses”, although she ultimately ended up voting to convict President Trump on the incitement of insurrection charge.¹⁰⁹

Even so, whether a Senator finds that the House investigation was flawed has shown to have a statistically significant impact on their vote. Figure F, which contains the results of a logistic regression analyzing criticism of the House investigation as a predictor of vote, reveals a strong correlation between these variables. A p-value of .006 is statistically significant ($p < 0.1$) and shows that there exists strong evidence against the null hypothesis that there exists no significant relationship between the variables. Additionally, a Pearson Coefficient of .571 indicates a strong positive correlation between criticizing the House and voting to acquit - the odds ratio tells us that Senators who do so are more than 14 times as likely than Senators who do not criticize the impeachment investigation to vote not guilty.

¹⁰⁹ Senator Susan Collins. *Sen Collins' Statement on Article of Impeachment*, 2021. <https://www.youtube.com/watch?v=J4mpP7iX4Zs>.

. logistic vote i.hinv

Logistic regression Number of obs = **28**
LR chi2(1) = **9.69**
Prob > chi2 = **0.0019**
Log likelihood = **-14.49064** Pseudo R2 = **0.2506**

vote	Odds ratio	Std. err.	z	P> z	[95% conf. interval]	
1.hinv	14.625	14.16463	2.77	0.006	2.191234	97.61193
_cons	.2222223	.1737191	-1.92	0.054	.0480145	1.028495

Note: **_cons** estimates baseline odds.

Figure F: Logistic regression of variable HINV (criticism of the House investigation) against vote

Characterizing the House investigation as flawed or problematic was the strongest predictor analyzed for deciding vote outcome. For these Senators, believing that the investigation was not thorough and thus that the indictment was perhaps unwarranted appeared to affect their decision in the trial. This indicates that these Senators saw their role in the impeachment trial as more than just fact-finders to allegations brought by the House; if that were the case, then criticism of the House investigation would not bear the same weight and the Senators would have based their decisions primarily on the evidentiary record presented during the trial itself. To achieve a bipartisan vote in future impeachments, the party leading the impeachment should take all necessary steps to conduct a thorough investigation from the launch of the inquiry to mitigate this type of criticism.

II. Characterization of Impeachment Proceedings as Overly Partisan

Similar to the variable HINV, the variable POLI (which was coded each time a Senator characterized the impeachment proceedings as overly partisan or political) proved to have a strong correlation with the decision to acquit.

```
. logistic vote poli
```

```
Logistic regression                                Number of obs =    28
                                                    LR chi2(1)      =    7.18
                                                    Prob > chi2     =  0.0074
Log likelihood = -15.745384                       Pseudo R2      =  0.1857
```

vote	Odds ratio	Std. err.	z	P> z	[95% conf. interval]
poli	8.999999	7.937253	2.49	0.013	1.597914 50.69109
_cons	.3333334	.2222222	-1.65	0.099	.0902425 1.231251

Note: **_cons** estimates baseline odds.

Figure G: Logistic regression of variable POLI (characterization of impeachment proceedings as overly partisan) against vote

Again, we see a statistically significant p-value of 0.013, and an odds ratio of just about 9. The Pearson Coefficient of .496 is also indicative of a strong positive correlation between calling the proceedings partisan and voting to acquit. These results show that partisan polarization does influence the way Senators approach the question of conviction in a fairly strong way. If a Senator believes that the proceedings have been little more than political theater waged against the president of the same party, then they are more likely to vote to acquit. Again, we see that these Senators considered normative questions such as partisanship when deciding how to cast their vote, showing that they did not rely on legal arguments alone.

III. Criticism of President Trump (CRIT)

The last variable that showed to be a predictor of vote outcome was whether the Senator criticized the behavior of President Trump on a moral level (variable coded as CRIT). A -.455 Pearson Coefficient with a p-value of 0.034 shows that criticizing President Trump corresponded with lower levels of acquittal. Despite this negative correlation, however, it is interesting to note that there were 9 instances of statements made by Senators in 2020 which criticized the moral behavior of President Trump's phone call with Ukrainian President Zelensky, but ultimately ended up voting to acquit Trump on all charges. For example, in her speech to the Senate regarding her vote in the 2020 impeachment, Sen. Lisa Murkowski stated that "the President's behavior was shameful and wrong. His personal interests do not take precedence over those of this great nation."¹¹⁰ Despite this verbal reprimanding of Trump's actions, Murkowski ultimately ended up voting not guilty. This is just one instance that shows that, when considering the question of impeachment, normative factors are considered but are not necessarily the driving force behind a decision to convict. These Senators made clear their stance that it is possible for a president to conduct himself in an inappropriate manner that does not rise to the level of an impeachable offense.

¹¹⁰ "SPEECH: Senator Murkowski on Impeachment Trial | U.S. Senator Lisa Murkowski of Alaska."
<https://www.murkowski.senate.gov/press/speech/speech-senator-murkowski-on-impeachment-trial>.

IV. Limitations - Linear Regression of All Statistically Significant Variables

It is important to note that when a multiple logistic regression of all three statistically significant variables (HINV, POLI, and CRIT) is run, the variables POLI and CRIT lose their statistical significance, as demonstrated in Figure H below.

```

. logistic vote i.hinv i.poli i.crit

```

Logistic regression	Number of obs =	28
	LR chi2(3) =	14.16
	Prob > chi2 =	0.0027
Log likelihood = -12.256839	Pseudo R2 =	0.3661

vote	Odds ratio	Std. err.	z	P> z	[95% conf. interval]
1.hinv	7.058842	7.653148	1.80	0.071	.8430758 59.10175
1.poli	3.894496	4.091553	1.29	0.196	.4967981 30.5297
1.crit	.1612347	.2166173	-1.36	0.174	.0115845 2.244087
_cons	.2364668	.2385687	-1.43	0.153	.0327342 1.708197

Note: **_cons** estimates baseline odds.

Figure H: Multiple Logistic Regression of Statistically Significant Independent Variables

The results show that an interaction effect exists between HINV and the other two variables, meaning that in some cases POLI and CRIT pick up on the effects of the HINV variable. HINV is therefore the strongest predictor of vote outcome.

Other limitations include a wide confidence interval, which is reflective of the small sample size of the study. Additionally, it is possible that the senators were exposed to external factors that may have influenced their decision on whether to vote or convict, but were absent

from the content of their statements. A review of those external factors is conducted in the following section.

V. Electoral Pressures as External Factors Influencing Vote Outcome

The statement analysis focused on the seven Republican senators who voted to convict a Republican president because their votes provide a unique window to look for insight into what constitutes a “high crime” in the absence of partisan calculations. This section takes a closer look at the pressures placed on each Senator by the GOP to vote along party lines, to evaluate whether their votes were truly void of political considerations and to search for alternate explanations for their votes which may not have been captured in the content of their statements. Each of the following profiles includes information (when available) about whether the senator was facing an upcoming election at the time they cast their votes, their party line vote score for the 116th Congress, public opinion data on how their constituency viewed impeachment, and whether the senator faced any political repercussions for their vote.

Sen. Richard Burr (R-NC)

Senator Burr represented North Carolina in the House of Representatives from 1994 - 2004, and was elected to the Senate in 2005 where he has been serving since.¹¹¹ After being re-elected in 2016, Burr announced that this would be his last term and that he would not be seeking reelection in 2022.¹¹² In the 116th Congress, Burr voted with President Trump’s position 89.3%

¹¹¹“Richard Burr - Ballotpedia.” https://ballotpedia.org/Richard_Burr.

¹¹² WRAL. “US Sen. Burr Says 2016 Will Be His Last Political Campaign :” WRAL.com, July 20, 2016. <https://www.wral.com/us-sen-burr-says-2016-will-be-his-last-political-campaign/15864857/>.

of the time,¹¹³ although 73% of the bills he sponsored were bipartisan and had a co-sponsor from the Democratic party.¹¹⁴ In the 2020 impeachment of President Trump, polls found that 50% of North Carolina voters opposed impeachment while 44% were in favor.¹¹⁵ In the 2021 impeachment, a 47% majority supported removal from office compared to 43% who were opposed.¹¹⁶ Following his vote to convict in the 2021 impeachment, Burr was censured by the North Carolina GOP.¹¹⁷

Sen. Pat Toomey (R-PA)

Senator Toomey has been the junior Senator from Pennsylvania since he was first elected in 2010.¹¹⁸ In 2020, and much like Sen. Burr, Toomey announced that he would not be seeking reelection in 2022.¹¹⁹ Although Sen. Toomey voted with Trump's position 85.5% of the time, he and the former president did not have a particularly positive history with each other.¹²⁰ After Toomey made comments in September 2021 that Donald Trump should not lead the Republican ticket in 2024, President Trump responded with characteristic lambasting, calling Toomey "a terrible representative for both Pennsylvania and the United States as a whole."¹²¹ Following his

¹¹³ "Tracking Congress In The Age Of Trump | FiveThirtyEight." <https://projects.fivethirtyeight.com/congress-trump-score/richard-burr/>.

¹¹⁴ "Sen. Richard Burr [R-NC]'s 2020 Report Card from GovTrack.U.S." https://www.govtrack.us/congress/members/richard_burr/400054/report-card/2020.

¹¹⁵ "ECU Polls North Carolinians on Impeachment, 2020 Election." <https://www.witn.com/content/news/ECU-polls-North-Carolinians-on-563071031.html>.

¹¹⁶ Husser, Usry, and Covington. "North Carolina Opinions about Trump Impeachment and Approval of Biden and Cooper". Survey of North Carolina Adults January 29-31, 2021. Elon University Poll.

¹¹⁷ "GOP Sen. Burr Censured by North Carolina GOP after Trump Conviction Vote - POLITICO." <https://www.politico.com/news/2021/02/15/richard-burr-north-carolina-censure-469027>.

¹¹⁸ "Pat Toomey - Ballotpedia." https://ballotpedia.org/Pat_Toomey.

¹¹⁹ "Pat Toomey of Pennsylvania Won't Run for Senate Reelection in 2022 - CNNPolitics." <https://www.cnn.com/2020/10/05/politics/pat-toomey-announcement-not-running-senate-pennsylvania/index.html>.

¹²⁰ Bycoffe, Aaron. "Tracking Congress In The Age Of Trump." FiveThirtyEight, January 30, 2017. <https://projects.fivethirtyeight.com/congress-trump-score/>.

¹²¹ Pat Toomey: Pennsylvania GOP Meeting Ends with No Resolution on Whether to Censure Toomey - CNNPolitics." <https://www.cnn.com/2021/02/24/politics/pennsylvania-gop-censure-toomey/index.html>.

vote to convict in 2021, the Pennsylvania GOP voted on whether to censure Sen. Toomey, but ultimately came to no resolution on the matter.

Sen. Bill Cassidy (R-LA)

Sen. Bill Cassidy has held his seat in the Senate since first being elected in 2014.¹²² In 2020 he was reelected with a margin of 40 percentage points. Though Cassidy is up for reelection in 2027, he has signaled that he may instead choose to run for Governor in Louisiana, a position that is currently occupied by democrat John Bel Edwards despite the state itself being red.¹²³ During the 116th Congress, 89.1% of Cassidy's votes were in line with President Trump's position.¹²⁴ In 2020, two thirds of Louisiana voters polled opposed the launch of the impeachment inquiry against President Trump.¹²⁵ After voting to convict in the 2021 impeachment, the Louisiana GOP voted to censure Cassidy.¹²⁶ As Louisiana operates on an open primary system, however, it is possible that if Cassidy chooses to run again in 2027 he might be insulated from a Republican challenger.

Sen. Susan Collins (R-ME)

Sen. Susan Collins was first elected to the Senate in 1996 and is the longest serving member of Congress in Maine.¹²⁷ In a victory that caught many pollsters off guard, Collins

¹²² "Bill Cassidy - Ballotpedia." https://ballotpedia.org/Bill_Cassidy.

¹²³ writer, TYLER BRIDGES | Staff. "Bill Cassidy Confirms He's Interested in Running for Louisiana Governor next Year." The Advocate. https://www.theadvocate.com/baton_rouge/news/politics/article_b14bdb18-b039-11ec-a2ec-bfad49c6a963.html.

¹²⁴ Bycoffe, Aaron. "Tracking Congress In The Age Of Trump." FiveThirtyEight, January 30, 2017. <https://projects.fivethirtyeight.com/congress-trump-score/>.

¹²⁵ uhé, Lester. "Exclusive WAFB Poll: Most Louisiana Voters Oppose Impeaching President Trump." <https://www.wafb.com/2019/11/12/exclusive-wafb-poll-most-louisiana-voters-oppose-impeaching-president-trump/>.

¹²⁶ CNN, Kelly Mena and Dan Merica. "Louisiana Republican Party Censures Cassidy Following Vote to Convict Trump." CNN. <https://www.cnn.com/2021/02/13/politics/bill-cassidy-louisiana-republican-party-censure/index.html>.

¹²⁷ "Susan Collins (Maine) - Ballotpedia." [https://ballotpedia.org/Susan_Collins_\(Maine\)](https://ballotpedia.org/Susan_Collins_(Maine)).

defeated democratic challenger Sarah Gideon in 2020. It was predicted that her support of the nomination of Brett Kavanaugh to the Supreme Court, as well as her acquittal of President Trump in his first impeachment trial, would put her out of favor with key Maine voters. Though she is up for reelection in 2027, she has not yet signaled if she intends to join the race. Per data compiled by FiveThirtyEight, Sen. Collins voted in line with Trump's position 65.1% of the time.¹²⁸ After her vote to convict President Trump in the 2021 impeachment trial, the Maine GOP voted on whether to censure her but ultimately voted against doing so.¹²⁹

Sen. Lisa Murkowski (R-AK)

Sen. Murkowski has been serving in the Senate since 2004, with a particularly impressive victory in 2010 wherein she secured her seat through a write-in vote.¹³⁰ She was last elected in 2016 and is running for reelection in the 2022 midterms (President Trump has backed her rival).¹³¹ Murkowski is the only Senator who voted to convict Trump in 2021 who is facing the upcoming election. During the 116th Congress, 72.5% of her votes were in line with the position of President Trump.¹³² With regards to the 2021 impeachment, a margin of 46%-51% of Alaskan voters were opposed to removal of President Trump.¹³³ After voting to convict, Murkowski was

¹²⁸ Bycoffe, Aaron. "Tracking Congress In The Age Of Trump." FiveThirtyEight, January 30, 2017. <https://projects.fivethirtyeight.com/congress-trump-score/>.

¹²⁹ "Maine GOP Rejects Censuring Collins over Impeachment Vote | AP News." <https://apnews.com/article/donald-trump-capitol-siege-susan-collins-impeachments-bangor-4086bfd65b907d10c59914812f770cf2>.

¹³⁰ "Lisa Murkowski - Ballotpedia." https://ballotpedia.org/Lisa_Murkowski.

¹³¹ "Trump Endorses Murkowski Challenger - POLITICO." <https://www.politico.com/news/2021/06/18/trump-murkowski-alaska-senate-495187>.

¹³² Bycoffe, Aaron. "Tracking Congress In The Age Of Trump." FiveThirtyEight, January 30, 2017. <https://projects.fivethirtyeight.com/congress-trump-score/>.

¹³³ Research, Ivan Moore Alaska Survey. "Alaska Survey Research Poll on Senators' Role in Impeachment." The Anchorage Press. https://www.anchoragepress.com/news/alaska-survey-research-poll-on-senators-role-in-impeachment/article_f0221394-3cd6-11ea-85cb-d3d07ff73ffa.html.

swiftly censured by the Alaska GOP, who announced they would be looking to support a challenger in the 2022 election.¹³⁴

Sen. Mitt Romney (R-UT)

Sen. Romney was elected to the Senate in 2018, and is up for reelection in 2024.¹³⁵ An outspoken critic of President Trump from the announcement of his candidacy, the pair had a particularly negative relationship throughout Trump's time in office. In a 2016 speech, Romney referred to Trump as a "phony" and a "fraud," creating an enemy in Trump who subsequently slapped Romney with a "Republican in Name Only" (RINO) nametag.¹³⁶ Romney voted in line with the former president 75% of the time during the 116th Congress.¹³⁷ In the 2020 impeachment trial, voters who were polled in Utah were 53% opposed and 39% in support of impeachment, meaning that Romney's conviction vote probably did not match the preferences of a majority of his constituency.¹³⁸ After his second conviction in the 2021 impeachment, Romney was censured by many local GOP chapters, but was not censured by the Utah GOP.¹³⁹

¹³⁴ "Alaska GOP Censures Murkowski, Looks for '22 Challenger | AP News." <https://apnews.com/article/donald-trump-alaska-anchorage-lisa-murkowski-elections-abbf5443c98c3b8df52973e79deb4b44>.

¹³⁵ "Mitt Romney - Ballotpedia." https://ballotpedia.org/Mitt_Romney.

¹³⁶ "Mitt Romney: Donald Trump Is a 'phony, a Fraud' | CNN Politics." <https://www.cnn.com/2016/03/03/politics/mitt-romney-presidential-race-speech/index.html>.

¹³⁷ Bycoffe, Aaron. "Tracking Congress In The Age Of Trump." *FiveThirtyEight*, January 30, 2017. <https://projects.fivethirtyeight.com/congress-trump-score/>.

¹³⁸ Deseret News. "Where Do Utahns Stand on Removing President Donald Trump from Office?," January 28, 2020. <https://www.deseret.com/utah/2020/1/27/21083891/poll-trump-impeachment-trial-john-bolton-mitt-romney-deseret-news-hinckley-institute-rasmussen>.

¹³⁹ AP NEWS. "Bid to Censure Romney for Trump Impeachment Votes Fails," May 2, 2021. <https://apnews.com/article/trump-impeachment-impeachments-government-and-politics-d8de662875265ffb6069d3684cd82c83>.

Sen. Ben Sasse (R-NE)

Sen. Sasse has been serving in the U.S. Senate since 2015, and is up for reelection in 2027.¹⁴⁰ Throughout the 116th Congress, Sen. Sasse voted in line with Trump's position 84.8% of the time.¹⁴¹ Sasse joins the ranks of other Republicans whom President Trump has targeted as being RINOs or made other disparaging comments about, due to Sasse's criticism and anti-Trump stance. Following his vote to convict in the 2021 impeachment, Sasse was censured by some local chapters of the GOP, but the Nebraska GOP did not vote to censure him.¹⁴²

VI. Conclusion

Understanding the political situation for each of the senators who broke party ranks by voting to convict President Trump in the 2021 impeachment helps to contextualize their vote and analyze whether they were acting free from external political pressures. In the 2020 vote to convict, 3 of the seven senators were facing elections at the end of the year (Cassidy, Collins, and Sasse), 1 was up for election in 2022 (Murkowski), 2 had already announced they were retiring (Burr and Toomey), and 1 was not facing voters until 2024 (Romney). In the second impeachment trial vote, election dates for these seven senators were much farther away. Only Murkowski is up for reelection during the 2022 midterms, and the senators who are not retiring will be holding onto their seats until 2025 or 2027. Some of these senators (particularly Toomey, Murkowski, Sasse, and Romney) had made it clear prior to their vote that they were not fans of President Trump. Though many of the senators faced political repercussions for their conviction

¹⁴⁰ Ben Sasse - Ballotpedia." https://ballotpedia.org/Ben_Sasse.

¹⁴¹ Bycoffe, Aaron. "Tracking Congress In The Age Of Trump." FiveThirtyEight, January 30, 2017. <https://projects.fivethirtyeight.com/congress-trump-score/>.

¹⁴² "Nebraska GOP Rebukes Sen. Ben Sasse, Stops Short of Censure | Politics | Omaha.Com." https://omaha.com/news/state-and-regional/govt-and-politics/nebraska-gop-rebukes-sen-ben-sasse-stops-short-of-censure/article_74bd1db0-75ed-11eb-beee-0fd210fd52f8.html.

votes, specifically being censured by their respective GOP chapters, it is unclear how much of an effect this will have on voters, or if memory of the conviction vote will factor into how the public views these senators in their upcoming races. Additionally, while it may seem as though politics on the party level may not have been driving these conviction votes, there still exists the chance that the votes were influenced by personal politics. Many of these senators had negative histories with President Trump and were outspoken critics of him prior to this impeachment. It is certainly possible that this negative bias may have influenced how these senators voted.

Chapter 7: Conclusion

*“No government power can be abused long. Mankind will not bear it.” - Samuel Johnson*¹⁴³

On January 20, 2021, Joe Biden stood on the steps of the U.S. Capitol and placed his right hand on a Bible being held by Supreme Court Justice Sonia Sotomayor. The nation looked on as he swore an oath to “support and defend the Constitution of the United States” and to “well and faithfully discharge the duties” of the presidential office.¹⁴⁴ So help him God. Just 24 hours later, President Biden was accused of breaking that oath. Rep. Marjorie Taylor Greene (R-GA) filed articles of impeachment against him, charging Biden with endangering the security of the United States and threatening the integrity of the democratic system, among other accusations.¹⁴⁵ This was not the only time Republican politicians have tried to remove President Biden from office as a method of political retaliation for the double impeachments of former President Trump. Since that chilly day in January almost a year and a half ago, seven impeachment resolutions have been brought against Biden, and there are almost certainly more on the way.¹⁴⁶

In the contemporary Congress, impeachment has become a game of political ping pong; when one party gains majority control, their political opponents swiftly begin their calls to remove the sitting president from office. As elections shift the playing field, the battle between blue and red is inverted as the new minority seeks vengeance on the actions of the previous Congress to impeach. It is clear from a historical analysis that impeachment in America was never intended to be a process completely divorced from politics; on the contrary, the Framers

¹⁴³ J. Boswell (1952). *Life of Johnson*, (1st ed., vol. 44, *Great Books of the Western World*), Chicago, Illinois: Encyclopædia Britannica. 195.

¹⁴⁴ “Inauguration of the President of the United States | USA.gov.” <https://www.usa.gov/inauguration>.

¹⁴⁵ Greene, Marjorie Taylor. “H.Res.57 - 117th Congress (2021-2022): Impeaching Joseph R. Biden, President of the United States, for Abuse of Power by Enabling Bribery and Other High Crimes and Misdemeanors.” Legislation, March 5, 2021. 2021/2022. <https://www.congress.gov/bill/117th-congress/house-resolution/57>.

¹⁴⁶ See Figure C.

had a clear understanding that “the relative strength of the parties” would naturally intervene. The question of impeachment thus moves beyond the scope of the purely textual into the realm of the normative, a quasi-judicial proceeding that is rooted-in, yet is constantly re-defining, precedent. The definition of “high crimes and misdemeanors” remains ambiguous, although not entirely unintelligible. A strong body of literature has for centuries argued the meaning of the impeachment clause, and this debate is one that will continue to persist so long as no alterations are made to the original text of Article II, Section IV. This is because the Framers anticipated that as America grew, the role of the executive would similarly expand with time. Today, President Biden exercises much more authority than President Washington - holding the executive accountable to his office requires an understanding of the duties assigned to that office in the present day. This is not to say that impeachments of the past cannot help guide impeachments of the future. There are certain crimes that the Founders identified as being timeless (such as treason or bribery). Additionally, as demonstrated in Chapter 4, the historical record of impeachments sheds light on how Congress has interpreted impeachable behavior over the years, and in many different scenarios. An analysis of the record of judicial impeachments establishes that there does exist distinguishing features between the removal of a president as opposed to other civil officers, due in part to the resounding effects that ousting an elected figure from power can have on maintaining the integrity of the democratic system. The normative question implicit in impeachment trials appears to take up more space in the considerations of removing a president than in any other instance.

The closest that we can come to delving into the minds of the senators as they decide how to cast their consequential vote of “guilty” or “not guilty” is by searching their explanations or reasoning for clues. Despite the current Congress exhibiting unprecedented levels of partisan

polarization, the 2021 impeachment of President Donald Trump was the most bipartisan on record. The seven senators who split with party lines to convict President Trump in 2021 create a window that allows us to look through the veil of party loyalty and into the heart of the impeachment question. Two of these senators had already announced they would not be seeking reelection prior to their vote. Four of the other six are not facing voters at the polls for quite some time. So if it wasn't party politics, what then was the deciding factor on their conviction votes? It is possible that personal politics played a role, with many of these senators declaring themselves to be anti-Trump Republicans. A less cynical explanation is that they truly found the President's behavior to rise to the bar of "high crimes." An analysis of statements made by these senators explaining their votes revealed that the most powerful predictor of how these Senators voted was whether they criticized the investigation conducted by the House as flawed or incomplete. Interestingly, comments made about the evidentiary record presented by the prosecution during the trial itself did not have a significant correlation to the way they voted. Other predictors included references to the impeachment proceedings as overly political (a common justification for acquittal votes in 2020), as well as criticism of the president. It is also important to note that in a majority of the statements made in 2020, these Senators scolded President Trump for his conversation with President Zelensky, citing the behavior as morally wrong - ultimately, however, these senators still voted to acquit. This shows that the normative aspect of impeachment is quite a high bar, as many senators indicated that they would rather leave the decision to remove President Trump to the hands of voters in the upcoming election than move to oust him themselves. As summarized by Sen. Pat Toomey, "overturning an election by

convicting the president” would be “the most obviously antidemocratic act the Senate can engage in.”¹⁴⁷

A major limitation of this quantitative analysis was the small sample size of statements and the senators who made them. Though more data is needed to fully examine the extent of the relationship between different justifications for voting and the decision to vote, asking for additional information is a Catch-22; the only way that we can examine the effects of this analysis is through more presidential impeachments, which is not ideal for our nation. That being said, there is certainly an increasing trend in calls for impeachment in the House. Whether these threats manifest themselves in sustainable resolutions, or if they will be brushed aside as political theater, remains to be seen. Further research on the topic could include an examination of proposed legislation to define the impeachment clause more narrowly, such as a bill sponsored by Rep. Katherine Clark (D-MA) called the “Presidential Accountability Act.” This bill proposes to amend the federal criminal code to impose criminal and/or civil penalties on presidents who participate in official matters which affect their financial interests.¹⁴⁸ This is just one example of attempts to define clearer parameters for inappropriate presidential behavior, and to establish a broader arsenal of ways in which to hold the executive accountable. Additional research might seek to examine the effects of increased calls for impeachment on the integrity of the democratic system, perhaps by looking at public opinion data on how the executive office is perceived. It may be the case that, as impeachment grows in popularity as a political tool, Americans may

¹⁴⁷ Inquirer, Pat Toomey, For the. “Pat Toomey: I’m Voting to Acquit President Trump. Here’s Why. | Opinion.” <https://www.inquirer.com/opinion/commentary/trump-impeachment-senate-acquittal-pat-toomey-vote-20200204.html>.

¹⁴⁸ Clark, Katherine M. “H.R.6340 - 114th Congress (2015-2016): Presidential Accountability Act.” Legislation, December 5, 2016. 2015/2016. <https://www.congress.gov/bill/114th-congress/house-bill/6340>.

begin to believe that their votes do not matter, as Congress may oust a duly elected executive on political whims.

Though Gerald Ford may have been right when he said that “an impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history,” the political nature of impeachments should not be overstated. The cross party-line conviction votes of the most recent impeachments is one indicator that the question of how to define “high crimes” is not completely steeped in partisanship, and that there does exist certain scenarios where impeachment transcends party interests. The seven Senators who broke party lines in 2021 may have set new precedent on impeachment moving forward. On the contrary, it is possible that future politicians facing the question of whether to convict a president of the same party will look back on the 2021 impeachment as a cautionary tale - the threat of being censured or disowned by the party for a rogue vote might be enough to steer conviction votes back into strictly red and blue lanes.

Regardless of how heavy a hand politics plays in the proceedings, the fact that no president has yet to be removed from office should not be taken as a sign that impeachment is a flawed method of executive accountability. For many, the 2021 impeachment of Donald Trump was disheartening, and critics of his acquittal have wondered if conviction is not possible on an incitement of insurrection charge, then when will impeachment ever be successful? Republicans who voted to acquit have been lambasted for allegedly betraying their constitutional duties in the name of party loyalty. While it is certainly likely that some Republican senators voted to acquit out of loyalty to president or their political agenda, an analysis of all acquittal votes in the 2021 impeachment is much more complex, as many senators voted to acquit not on the merits of the charge but rather because of perceived issues of jurisdiction and an incomplete House

investigation. Either way, the Senate during the brief period of the 2021 impeachment trial became a hotbox of enflamed political passions. Yet the complexity of impeachment reveals that the Framers intentionally crafted mechanisms to quell the “fickleness and passion” of political sentiment in the proceedings. First and foremost, the quasi-judicial nature of the Senate trial retains the essential characteristics of any jury trial. It is important to remember that the burden lies with the House managers, and not with the president’s defense counsel. While some may be disappointed by the outcomes of the recent impeachments, John Adams reminds us that “it is more important that innocence be protected than it is that guilt be punished.”¹⁴⁹ Though partisanship works both ways and has perhaps *barred* certain presidents from being removed from office, it is better this than an alternative where partisanship continually ousts the executive, as doing so would continue to erode the integrity of the electoral system. It should be cautioned that increased attempts to remove the president for abuses of office may have the adverse effect of creating a tyranny of the legislature. Wielding impeachment as a political tool is truly an abuse of the powers of office, one that undermines democratic integrity by waging war on popular sovereignty. The impeachment clause, like the Constitution itself, is a living piece of text - though the meaning of “high crimes and misdemeanors” will undoubtedly persist as a topic of scholarly debate, its ambiguity is what threatens, but also precisely what prevents, its abuse. We can only hope, as the Founders did, that politicians will choose to put partisanship aside to preserve the constitutional order, and to protect the integrity of the presidential office, should the occasion demand.

¹⁴⁹ “John Adams | Trial Lawyer Hall of Fame.” <http://www.triallawyerhalloffame.org/inductees/john-adams/>.

Appendix A

**CODEBOOK
THE POLITICS OF IMPEACHMENT: A CONTENT ANALYSIS OF CONVICTION
DECISIONS**

April 2022

Section A: Classification Variables

Variable Name: Senator

Variable Label: SEN

Statements will be assigned a two digit number to indicate which Senator authored or made the statement.

- 01 - Richard Burr (R-NC)
- 02 - Bill Cassidy (R-LA)
- 03 - Susan Collins (R-ME)
- 04 - Lisa Murkowski (R-AK)
- 05 - Mitt Romney (R-UT)
- 06 - Ben Sasse (R-NE)
- 07 - Pat Toomey (R-PA)

Variable Name: Date of Original Statement

Variable Label: DATE

This variable will indicate the date that the statement was authored or made. Dates should be assigned in a 6 digit number format: MMDDYY

Example:

July 4, 2021 = 070421

Variable Name: Type of Content

Variable Label: TYPE

- 01: Website (Press Release)
- 02: Speech on Senate floor (CSPAN footage)
- 03: TV interview
- 04: Radio interview
- 05: OTHER

Variable Name: Vote

Variable Label: VOTE

- 00: Acquit
- 01: Convict

Section B: Content Variables

Variable Name: Reference to House Investigation

Variable Label: HINV

This variable will measure whether the Senator criticizes the investigation conducted by the House Judiciary Committee. These statements will identify flaws with the thoroughness or process of the investigation, and will be used in support of the Senator's decision to acquit. For example, criticism could include issues taken with the depth of the investigation, such as the number of witnesses called, lack of specific testimony, types of documents analyzed, etc.

IMPORTANT: Those instances of criticism where Senators refer to the House investigation as being "partisan" or "overly politicized" will be identified as both HINV and POLI.

Examples:

"The House actually withdrew a subpoena seeking testimony from Dr. Charles Kupperman, a national security aide, once he went to court for guidance. And the House chose not to issue a subpoena to John Bolton, the National Security Advisor whom the House has identified as the key witness. At a minimum, the House should have pursued the full extent of its own remedies before bringing impeachment charges, including by seeking the assistance of a neutral third party – the Judicial Branch." - U.S. Senator Susan Collins (R-ME)

Does the statement contain criticism of the impeachment investigation conducted by the House?

00: No

01: Yes

Variable Name: Legal Argument (Senate Trial)

Variable Label: SLEG

This variable will measure whether the Senator makes any legal argument about the evidence presented by the prosecution during the trial before the High Court of Impeachment. These comments will be evaluative of the evidentiary record as constructed by the House managers. For example, whether the Senator states that the prosecution proved their case "beyond a reasonable doubt", or has "compiled clear and compelling evidence" will be taken as instances of this type of legal argument.

Examples:

“The evidence is compelling that President Trump is guilty of inciting an insurrection against a coequal branch of government and that the charge rises to the level of high Crimes and Misdemeanors. Therefore, I have voted to convict.” - U.S. Senator Richard Burr (R-NC)

Does the statement contain a legal argument about the prosecution’s presentation of evidence during the Senate trial?

00: No

01: Yes

Variable Name: Textualist Argument

Variable Label: TEXT

This variable is intended to measure whether the Senator makes any reference to the Constitution (a specific clause or the document as a whole) in supporting their decision whether to acquit or convict. The Senator couches their justification for their vote in specific constitutionally enumerated rights, arguing either that the existence of a constitutional clause was either violated by the president, or allows for the president’s conduct, in a given instance.

IMPORTANT: Any reference to the impeachment clause or the phrase “high crimes and misdemeanors” will be coded ONLY under OPDEF.

Example:

“Second is the contention that the First Amendment protects the President’s right to make any sort of outrageous and false claims, no matter the consequences. But the First Amendment was not designed and has never been construed by any court to bar the impeachment and conviction of an official who violates his oath of office by summoning and inciting a mob to threaten other officials in the discharge of their constitutional obligations.” - U.S. Senator Susan Collins (R-ME)

Does the statement include a constitutional argument for or against impeachment?

00: No

01: Yes

Variable Name: Originalist Argument

Variable Label: ORIG

This variable will measure whether the Senator makes any reference to the Founding Fathers or the Framers, and their intended use of the impeachment clause, in support of their decision whether to acquit or convict in a given instance. The Senator refers to any writings authored by the Founding Fathers or the Framers on the topic of impeachment, for example *Federalist 65*, or any notes from the Constitutional Convention.

Example:

“The Founding Fathers who crafted our modern impeachment mechanism predicted this moment, and warned against a solely partisan and politically-motivated process. They understood that an impeachment process rooted purely in disagreements about policy would subordinate the Executive to Congress, rather than delineating it as a co-equal branch of our federal government. Instead, they believed issues that do not meet the Constitutional threshold for impeachment should be navigated through our electoral process.” - U.S. Senator Richard Burr (R-NC)

Does the statement make a reference to the Founders or Framers?

00: No

01: Yes

Variable Name: Operational Definition

Variable Label: OPDEF

This variable is intended to measure whether the Senator explicitly offers their own definition of what constitutes a “high crime and misdemeanor” through an independent interpretation of the impeachment clause.

Example:

“Impeachment of a president should be reserved for conduct that poses such a serious threat to our governmental institutions as to warrant the extreme step of immediate removal from office.” - U.S. Senator Susan Collins (R-ME)

“While I do not believe that the conviction of a President requires a criminal act, the high bar for removal from office is perhaps even higher when the impeachment is for a difficult-to-define noncriminal act.” - U.S. Senator Susan Collins (R-ME)

Does the statement contain an operational definition of “high crimes and misdemeanors”?

00: No

01: Yes

Variable Name: Political Argument

Variable Label: POLI

This variable will measure whether the Senator refers to any aspect of the impeachment process (House investigation, Senate trial) as overly political or partisan. This does not include any reference to behavior of specific political actors as overly political or partisan (those instances will be coded under CHAR), but does include references to the opposing party being overly partisan; for example, references to Democrats as a whole vs Nancy Pelosi in particular. This variable is specific to instances of referring to the nature of the proceedings, in part or as a whole, as politically motivated.

Example:

“House Democratic leadership turned impeachment into a series of partisan hearings searching for a crime that changed by the day.” - U.S. Senator Bill Cassidy, M.D. (R-LA)

Does the statement refer to any aspect of the impeachment proceedings as political or partisan?

00: No

01: Yes

Variable Name: Historical Argument

Variable Label: HIST

This variable will measure whether the Senator refers to presidential impeachments of the past, to either draw a comparison or make a distinction between how impeachment investigations were conducted. This could be interpreted as the Senator attempting to draw out precedent from prior impeachments.

Example:

“The Watergate Investigation, for example, convinced Americans that President Nixon committed crimes, forcing his resignation with overwhelming support for removal in the House and the Senate. In the case against President Trump, the House declined to call witnesses...” - U.S. Senator Bill Cassidy, M.D. (R-LA)

Does the statement refer to a prior presidential impeachment?

00: No

01: Yes

Variable Name: Character Attack

Variable Label: CHAR

This variable will measure whether the Senator makes any criticizing remarks with regards to the conduct or behavior of specific political actors, including any name calling, or any reference to the individual as being politically motivated.

Example:

“Speaker Nancy Pelosi held the articles for 37 days. That decision smacks of partisan, political motivations.” - U.S. Senator Bill Cassidy, M.D. (R-LA)

Does the statement contain criticism of particular individuals?

00: No

01: Yes

Variable Name: Description of Role in Trial

Variable Label: ROLE

This variable will measure whether the Senator includes a description of their role in the impeachment trial. For example, the Senator may refer to themselves as an impartial juror, or an independent fact finder.

Example:

“I committed to upholding my oath as a U.S. Senator—to listen to each side impartially, review all the facts, and then decide how I would vote.” - U.S. Senator Lisa Murkowski (R-AK)

Does the statement of the Senator include a characterization of their role in the trial?

00: No

01: Yes

Variable Name: Criticism of President Trump

Variable Label: CRIT

This variable will measure whether the Senator includes any criticism of President Trump in their remarks, including any normative argument about whether his actions were inappropriate or immoral.

Example:

00: No

01: Yes

Appendix B

Senator	Date of Statement	Statement Type
Richard Burr	02/05/2020	Press Release (Website)
Richard Burr	02/13/2021	Press Release (Website)
Pat Toomey	02/05/2020	Press Release (Website)
Pat Toomey	02/04/2020	Op-Ed
Pat Toomey	02/13/2021	Press Release (Website)
Lisa Murkowski	02/25/2020	Newspaper Interview
Lisa Murkowski	02/03/2020	Speech on Senate Floor
Lisa Murkowski	01/13/2021	Newspaper Interview
Lisa Murkowski	01/14/2021	Press Release (Website)
Lisa Murkowski	02/14/2021	Press Release (Website)
Ben Sasse	09/25/2019	Newspaper Interview
Ben Sasse	02/13/2021	Press Release (Website)
Susan Collins	02/04/2020	Speech on Senate Floor
Susan Collins	01/30/2020	Press Release (Website)
Susan Collins	01/21/2020	Press Release (Website)
Susan Collins	02/04/2020	TV Interview
Susan Collins	02/06/2020	TV Interview
Susan Collins	02/13/2021	Speech on Senate Floor
Mitt Romney	01/20/2020	Press Release (Website)
Mitt Romney	02/05/2020	Speech on Senate Floor
Mitt Romney	02/18/2021	Speech on Senate Floor
Mitt Romney	02/13/2021	Press Release (Website)
Bill Cassidy	09/24/2019	Press Release (Website)
Bill Cassidy	12/10/2019	Press Release (Website)
Bill Cassidy	12/18/2019	Press Release (Website)
Bill Cassidy	02/13/2021	Tweet
Bill Cassidy	02/14/2021	TV Interview
Bill Cassidy	02/04/2020	Speech on Senate Floor

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