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Impeachment Grounds: Part 2: Selected Constitutional Convention Materials

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Summary

This is a collection of selected background materials pertinent to the issue of what constitutes impeachable misconduct for purposes of Article II, section 4 of the United States Constitution quoted below. It includes excerpts from the notes of the debates at the Constitutional Convention in Philadelphia in 1787 and from a few of the state ratifying conventions. It is the second of six segments that together with footnotes comprise, *Impeachment Grounds: A Collection of Selected Materials*, CRS Report 98-882.

The President, Vice President and all Civil Officers of the United States, shall be removed from Office on impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors. U.S.Const. Art. II, §4

Constitutional Convention of 1787

The Constitutional Convention in Philadelphia that produced the United States Constitution began its substantive work with the presentation of the Resolutions of Edmund Randolph of Virginia. The Randolph Resolutions supplied a broad general outline of a constitution for a national government and the initial format for discussion. The Ninth Resolution declared:

"Resolved that a National Judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature to hold their offices during good behavior; and to receive punctually at stated times fixed compensation for their services. that the jurisdiction [of these tribunals] shall be to hear & determine . . . all piracies & felonies on the high seas, captures from an enemy; cases in which foreigners or citizens of other States applying to such jurisdictions may be interested, or which respect the collection of the National revenue; impeachments of any National offices, and questions which may involve the national peace and harmony," I

RECORDS OF THE FEDERAL CONVENTION OF 1787 (FARRAND), 21-2 (Madison) (May 29, 1787) (Farrand, ed. 1888).

Impeachment was next mentioned when the Convention agreed that the President was "to be removable on impeachment & conviction of mal-practice or neglect of duty," ID. at 88 (Madison) (June 2, 1787). With a month's reflection, two delegates, Pinkney and Morris, moved that the removal language be stricken:

"Mr Pinkney & Mr Govr. Morris moved to strike out this part of the Resolution. Mr P. observed. he ought not be impeachable whilst in office

"Mr Davie. If he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected. He considered this as an essential security for the good behavior of the Executive.

"Mr Wilson concurred in the necessity of making the Executive impeachable whilst in office.

"Mr Govr. Morris. He can do no criminal act without Coadjutors who may be punished. In case he should be re-elected, that will be sufficient proof of his innocence. Besides who is to impeach? Is the impeachment to suspend his functions. If it is not the mischief will go on. If it is the impeachment will be nearly equivalent to a displacement, and will render the Executive dependent on those who are to impeach.

"Col. Mason. 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? When great crimes were committed he was for punishing the principal as well as the Coadjutors. There had been much debate & difficulty as to the mode of chusing the Executive. He approved of that which had been adopted at first, namely of referring the appointment of the Natl. Legislature. One objection agst. Electors was the danger of their being corrupted by the Candidates: & this furnished a peculiar reason in favor of impeachments whilst in office. Shall the man who has practiced corruption & by that means procured his appointment in the first instance, be suffered to escape punishment, by repeating his guilt?

"Docr. Franklin was for retaining the clause as favorable to the executive. History furnishes one example only of a first Magistrate being formally brought to public Justice. Every body cried out agst this as unconstitutional. What was the practice before this in cases where the chief Magistrate rendered himself obnoxious? Why recourse was had to assassination in which he was not only deprived of his life but of the opportunity of vindicating his character. It wd. be the best way therefore to provide in the Constitution for the regular punishment of the Executive when his misconduct should deserve it, and for his honorable acquittal when he should be unjustly accused.

"Mr. Govr. Morris admits corruption & some few other offences to be such as ought to be impeachable; but thought the cases ought to be enumerated & defined:

"Mr. Madison — thought it indispensable that some provision should be made for defending the Community agst the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service, was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers. . . In the case of the Executive Magistracy which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.

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"Mr. King expressed his apprehensions that an extreme caution in favor of liberty might enervate the Government we were forming. He wished the House to recur to the primitive axiom that the three great departments of Govts. should be separate & independent: that the Executive & Judiciary should be so as well as the Legislative: that the Executive should be so equally with the Judiciary. Would this be the case if the Executive should be impeachable? It had been said that the Judiciary would be impeachable. But it should have been remembered at the same time that the Judiciary hold their places not for a limited time, but during good behavior. It is necessary therefore that a forum should be established for trying misbehavior. Was the Executive to hold his place during good behavior? — The Executive was to hold his place for a limited term like the members of the Legislature; Like them particularly the Senate whose members would continue in appointment the same term of 6 years. He would periodically be tried for his behavior by his electors, who would continue or discontinue him in trust according to the manner in which he had discharged it. Like them therefore, he ought to be subject to no intermediate trial, by impeachment. He ought not to be impeachable unless he hold his office during good behavior, a tenure which would be most agreeable to him; provided an independent and effectual forum could be devised; But under no circumstances ought he to be impeachable by the Legislature. This would be destructive of his independence and of the principles of the Constitution. He relied on the vigor of the Executive as a great security for the public liberties.

"Mr. Randolph. The propriety of impeachments was a favorite principle with him; Guilt wherever found ought to be punished. The Executive will have great opportunities of abusing his power; particularly in time of war when the military force, and in some respects the public money will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults & insurrections. He is aware of the necessity of proceeding with a cautious hand, and of excluding as much as possible the influence of the Legislature from the business. He suggested for consideration an idea which had fallen (from Col Hamilton) of composing a forum out of the Judges belonging to the States: and even of requiring some preliminary inquest whether just grounds of impeachment existed.

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"Mr.Govr. Morris's opinion had been changed by the arguments used in the discussion. He was now sensible of the necessity of impeachments, if the Executive was to continue for any time in office. Our Executive was not like a Magistrate having a life interest, much less like one having an hereditary interest in his office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard agst it by displacing him. One would think the King of England well secured agst bribery. He has as it were a fee simple in the whole Kingdom. Yet Charles II was bribed by Louis XIV. The Executive ought therefore to be impeachable for treachery; Corrupting his electors, and incapacity were other causes of impeachment. For the latter he should be punished not as a man, but as an officer, and punished only by degradation from his office. This Magistrate is not the King but the prime-Minister. The people are the King. When we make him amenable to Justice however we should take care to provide some mode that will not make him dependent on the Legislature." II FARRAND 64-9 (Madison) (July 20, 1787).

The Convention voted to make the Executive removable on impeachment, but moved on without addressing the particulars. The delegates assigned the Committee on Detail the task of working these and other matters individually agreed upon into a

cohesive draft. The draft the Committee presented on August 6 designated as the "President" that officer who had been variously referred to as the "Executive", the "first Magistrate" up until then. It also declared that, "He shall be removed from his office on impeachment by the House of Representatives, and convicted in the supreme Court, of treason, bribery, or corruption," ID. at 186-87 (Madison).

After extensive discussion of other issues, the Convention referred a number of propositions to the Committee on Detail for examination, including a proposal for a "Council of State" to assist the President and to consist of the Chief Justice of the supreme Court as well as five designated department heads (secretary of domestic affairs, secretary of commerce and finance, etc.) appointed by the President. "Each of the Officers above mentioned shall be liable to impeachment and removal from office for neglect of duty, malversation, or corruption," ID. at 335-38 (Madison) (August 20, 1787).

The Committee reported a proposal on August 22 that, among other things, called for a Council, but made no mention of impeachment of its members. It did suggest that, "The Judges of the Supreme Court shall be triable by the Senate, on impeachment by the House of Representatives," but was silent as to the grounds for impeachment, ID. at 367 (Journal).

The delegates subsequently voted to assign impeachment and a handful of other nettlesome questions to a second committee, the so-called "Committee of Eleven." The Committee's partial report packaged together a number of recommendations concerning the President including one that, "He shall be removed from his office on impeachment by the House of Representatives, and conviction by the Senate, for Treason, or bribery ..." ID. at 499 (Madison) (September 4, 1787).

The Convention debated the recommendation four days later on the eighth of September:

"The clause referring to the Senate, the trial of impeachments agst. the President, for Treason & bribery, was taken up.

"Col. Mason. Why is the provision restrained to Treason & bribery only? Treason as defined in the Constitution will not reach many great and dangerous offences. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined— As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend: the power of impeachments. He moved. to add after `bribery' `or maladministration'. Mr. Gerry seconded him—

"Mr Madison So vague a term will be equivalent to a tenure during pleasure of the Senate.

"Mr Govr Morris, it will not be put in force & can do no harm— An election of every four years will prevent maladministration.

"Col. Mason withdrew `maladministration' & substitutes `other high crimes & misdemeanors'<agst. the State'>

"On the question thus altered [the Convention agreed].

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"In the amendment of Col: Mason just agreed to, the word `State' after the words [`]misdemeanors against' was struck out, and the words `United States' inserted, <unanimously> in order to remove ambiguity—

"On the question to agree to clause as amended, [the Convention agreed]

"On motion `The vice-President and other Civil officers and the U.S. shall be removed from office on impeachment and conviction as aforesaid' was added to the clause on the subject of impeachments."

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"A Committee was then appointed by Ballot to revise the stile of and arrange the articles which had been agreed to by the House." ID. at 550-53 (Madison). The Committee on Style reported out the language now found in Article II, section 4. ID. at 600.

State Ratifying Conventions et al.

"Mr. Wilson. . . . The last observation respects the judges. It is said that, if they are to decide against the law, one house will impeach them, and the other will convict them. I hope gentlemen will show how this can happen; for bare supposition ought not to be admitted as proof. The judges are to be impeached, because they decide an act null and void, that was made in defiance of the Constitution! What House of Representatives would dare to impeach, or Senate to commit, judges for the performance of their duty?" II THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION (ELLIOT), 478 (Pennsylvania) (December 4, 1787) (Elliot, ed. 1888).

"Mr. Iredell. Mr. Chairman, I was going to observe that this clause, vesting the power of impeachment in the House of Representatives, is one of the greatest securities for a due execution of all public offices. Every government requires it. Every man ought to be amenable for his conduct, and there are no persons so proper to complain of the public officers as the representatives of the people at large. The representatives of the people know the feelings of the people at large, and will be ready enough to make complaints. If this power were not provided, the consequences might be fatal. It will be not only the means of punishing misconduct, but it will prevent misconduct. A man in public office who knows that there is no tribunal to punish him, may be ready to deviate from his duty; but if he knows there is a tribunal for that purpose, although he may be a man of no principle, the very terror of punishment will perhaps deter him," IV ELLIOT 32 (North Carolina) (July 24, 1788).

"Mr. Maclaine. . . . I recollect it was mentioned by one gentleman, that petty officers might be impeached. It appears to me, sir, to be the most horrid ignorance to suppose that every officer, however trifling his office, is to be impeached for every petty offence; and that every man, who should be injured by such petty officers, could get no redress but by this mode of impeachment, at the seat of government, at the distance of several hundred miles, whither he would be obliged to summon a great number of witnesses. I hope every gentleman in this committee must see plainly that impeachments cannot extend to inferior officers of the United States. Such a construction cannot be supported without a departure from the usual and well-known practice both in England and America. But this clause empowers the House of Representatives, which is the grand inquest of the Union at large, to bring great offenders to justice. It will be a kind of state trial for high crimes and misdemeanors," IV ELLIOT 343-44 (North Carolina) (July 25, 1788).

"Mr. Madison. . . . The danger, then, consists merely in this—the President can displace from office a man whose merits require that he should be continued in it. What will be the motives which the President can feel for such abuse of his power, and the restraints that operate to prevent it? In the first place, he will be impeachable by this house, before the Senate, for such an act of maladministration; for I contend that the wanton removal of a meritorious officer would subject him to impeachment and removal from his own high trust," IV ELLIOT 380 (Debate during the First Congress) (June 16, 1789); also in 1 ANNALS OF CONGRESS 498.