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IMPEACHMENT AS AN INSTRUMENT FOR THE CONTROL OF FEDERAL OFFICIALS

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Abstract

The process of impeachment represents one of the most significant ways of governmental proceedings and charges. It may result in a judicial trial, consequent accusation of the President leading even to an immediate removal from the office. Despite the dramatic procedures, intrigues and importance involved in this process, its mechanism is poorly understood and perceived by the majority of people often in an incorrect way.

Key words: President, judicial trial, impeachment, Constitution, Congress of the USA.

To understand all the details concerning such a complicated process the impeachment represents is rather demanding not just for native-born Americans. This process is a quite unknown notion for a great majority of Europeans. When clarifying this specific area of the American political system, it is rather important to begin with a brief definition. It is possible to understand the notion of impeachment as a formal charge which is brought against a governmental official (not just against the President) by the House of Representatives. The Senate makes a judicial judgment. Therefore, the process of impeachment is a charge that may lead to a sentence. According to the Constitution, the Congress has the right to accuse a public official. If there is a suspicion that a public official (a judge or the President of the USA) misuses the authority, the Congress may initiate the prosecution. The Constitution states that it is the House of Representatives that has a sole right for the sanctions against a senior governmental official. There are two necessary steps for deposing a public official from a position. First, it is the House of Representatives that is supposed to bring formal allegations. These charges are defined as "Points of criminal sanctions against a public official". Majority of the House members are supposed to express their agreement with further proceedings by the means of a positive vote. Consequently, the Senate carries out a hearing. The official is

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deposed from a position if found guilty by the two thirds of senators. Despite a seemingly simple process, impeachment is such a complicated procedure that the Congress initiates this process just against a minimal number of officials. In the whole history of impeachment, the House of Representatives has brought the charges against 16 public officials, particularly two Presidents, one presidential advisor, one senator, a judge from the Supreme Court and eleven federal judges. The first President against whom this process was applied was **Andrew Johnson** in 1868. However, he was not sentenced because of one missing vote to get the two-third majority in the Senate. **Richard Nixon** was also very close to charges, which he avoided by an early resignation. The last of the Presidents facing the accusations was the President **Bill Clinton** in 1999, who was freed from the charges. Let us get back for a while to the second half of the 19th Century, and clarify the events connected with the process against the President **Johnson**.

The charges against the 17th President of the United States meant the completion of a long-term political fight among moderate **Johnson** and a radical republican movement, which at that time dominated the American Congress. **Johnson** was accused on February 24, 1868 in the House of Representatives while the charges consisted of the following eleven points:

1. Dismissing the Minister of War **Stanton** in spite of the positive voting of the Senate to reappoint him to the position;
2. Appointing **Thomas** to lead the Ministry of War ad interim¹ in spite of the lack of the fact that the dismissing of **Stanton** was not valid;
3. Appointing **Thomas** without the required preceding agreement of the Senate;
4. Conspiracy with **Thomas** and other unknown persons from the House of Representatives with the aim to obstruct **Stanton** illegally to continue in the position;
5. Conspiracy aiming to obstruct the tenure of office in a different way than within the bounds of law;
6. Conspiracy aiming to seize and take the possession of the United States at the Ministry of War;
7. Conspiracy aiming to seize and take the possession of the United States at the Ministry of War with a special intention to break the Tenure of Office Act;

¹ Temporarily.

8. Presenting **Thomas** as an authority to the office of Ministry of War, with the illegal intention to control the payments set aside for the military service and the Ministry of War;
9. Issuing commands for orders to Major-General **Emory** with the intention to break the Tenure Office Act;
10. Creating three public speeches with the intention to cause the contempt of Congress among the citizens of the United States;
11. The last point of the charges was the summary of the preceding ten points.

The most significant doubt regarded dismissing the Minister of War **Edwin Stanton**, and substituting him with the general adjutant **Lorenzo Thomas**. The process started on March 13, 1868, and drew a great amount of attention among politicians and in the public. It was for the first time in the history of the United States that the process was held with the President. The hearing of the President took 75 days. If the President had been found guilty, he would have had to be immediately removed from the office. However, **Johnson** was not found guilty. During three voting rounds, 35 senators voted for “guilty”, and 19 for “not guilty”. With respect to the fact that the Constitution required two-third majority for a sentence, according to the indictment points, **Johnson** was freed. Just one vote of a senator would be enough to change the verdict of the jury to “guilty”. At the end of the process, one of the senators stated: *“There is just a hope that this will never happen again”*. 131 years later, in 1999, history repeated. That time President of the USA **Bill Clinton** had to face the charges again.

After releasing the acquitting verdict, seven Republican senators, **Fessenden** (Maine), **Fowler** (Tennessee), **Grimes** (Iowa), **Henderson** (Missouri), **Trumbull** (Illinois), **van Winkle** (West Virginia) and **Ross** (Kansas), became consequently disconcerted by the fact that the process was manipulated by presenting one-sided evidence. Through their attitude, these senators resisted the official party strategy asking to denounce the Unionist President. After the process, various pieces of information appeared claiming that the Republican senators were corrupted to vote for acquitting **Johnson**. Doubts were so powerful that the senator representing Massachusetts **Ben Butler** was entrusted to manage the consequent investigation and interrogation of witnesses. On the basis of the following observations, he was gathering more evidence concerning the fact that some of the acquitting votes had been acquired by promising to assign a governmental position and bribes.

Consequent events meant satisfaction for the President **Johnson**. The Tenure of Office Act was annulled by the American Congress, which meant that to dismiss an official by the American President without the preceding approval of the Congress became possible. The verdict of the Supreme Court of the United States from 1926 related to *Myers vs. The United States* became even more influential. In this decision the Court confirmed the competence of the President to remove from office a postmaster without the agreement of the Congress. This fact was also introduced in the reasoning of the Supreme Court verdict through which the Tenure of Office Act from 1867 was definitely annulled.

The Constitution defines in an exact way when and under which circumstances it is possible to start a criminal prosecution. It means that the President, Vice-President and all governmental officials can be dismissed if convicted of treason, corruption, or other serious crimes and misdemeanours. Experts in the American constitutional law have different opinions on this definition. Treason and corruption are clearly defined. The Constitution states that treason is committed by a person who is helpful to the enemies of the United States of America. Corruption is the acceptance of some quid pro quo while performing a public duty. There are still ardent discussions on what in fact serious crimes and misdemeanours are. Constitutional experts state that public officials should be investigated and dismissed just in case of committing a most serious crime against the nation. On the other hand, other experts insist on the prosecution of the officials responsible for all illegal acts. Though the Constitution does not define serious crimes and misdemeanours, it is clear that public officials do not agree with the crimes that they should be prosecuted for. The original proposals stated that the President can be removed from office for a corrupt behaviour. Later, a change appeared – for bribery, treason and corruption. **George Mason** from Virginia suggested the addition of addendum on serious crimes and misdemeanours against the nation.

The final concept of the Constitution mentions the possibilities of bringing under the process of impeachment for treason, corruption or other serious crimes and misdemeanours. When the Constitution was written, the writers discussed whether the impeachment is indispensable, or not. Some of them thought that if they gave the Congress the power to dismiss a public official, they would weaken the position of the President. However, the others e.g. **James Madison**, were convinced of the fact that the introduction of impeachment would obstruct the corruption. There were also objections to how

the proceedings would be carried out. Some thought that all the proceedings should be chaired by the Supreme Court. Others, on the other hand, thought that judicial processes should be chaired by the judges of the supreme courts of all the states. In the end, the function of a court was assigned to the Senate that has been chairing all the proceedings concerning impeachment. Despite the fact that the essential principles of impeachment were anchored in the Constitution, it took some time and some expertise to find out how all of this would function. The first official brought officially under the process of impeachment, which in fact was not carried out, was **William Blount**, the senator from Tennessee. In 1797, he was accused of helping the British to occupy Louisiana and Florida. On January 14, 1799, the Senate rejected the responsibility for the management of the process, and instead of carrying out the proceedings **Blount** was simply dismissed from the Senate. The judge **John Pickering** from New Hampshire was the first officially dismissed public official who was accused by the Senate. He was found guilty of adultery and alcoholism on March 12, 1803. **Pickering** was removed from office. The investigation in 1805 was considered a main functioning test of the impeachment process. It was **Samuel Chase** – an auxiliary judge - who was investigated. He was the member of the Federalist Party, which was one of the two political parties responsible for controlling the federal government during the period of 1790 -1800. The opponents of Federalists, i.e. the Democratic Party, hoped to acquire the control over the Supreme Court of the USA. They planned to investigate the leaders of the Federalists. The Democrats believed that if they were successful in removing the Federalists, they would be able to substitute them at the Supreme Court. In the House of Representatives, they accused **Chase** of creating rude and unjust rules. The majority of the House of Representatives members voted for the beginning of a judicial process, and they consequently prosecuted him. Then they took him to the Senate for proceedings. The proceedings started on February 9, 1805, and took almost a month. When the proceedings were over, there were not a sufficient number of votes in the House to sentence him. So, he was cleared from the charges, and returned to the Supreme Court. Many experts think that if **Chase** had been found guilty, the Democrats would have tried to impeach and dismiss other federal judges. A significant principle was introduced by these proceedings – differences in a political conviction cannot be a reason to begin the process of impeachment. Since then, public officials have been prosecuted for corruption, treason, false evidence and tax evasions. But **Chase** was not the least

prosecuted person because of political differences. It happened again in 1868 when the President **Andrew Johnson** was investigated. **Johnson** was a Vice-President in the period of the President **Abraham Lincoln** at the end of the Civil War (1861-1865). After assassinating **Lincoln** in 1865, Johnson became the President. His task was to unite and reconcile northern and southern states after the long and bloody war. The fulfilment of this task proved to be impossible. Almost immediately after taking up the position of the President, he had problems with the members of the Congress and his own cabinet. Many Republicans did not believe in **Johnson**. He came from Tennessee, from a southern state. He was the only senator from the southern state who remained faithful to the Union at the beginning of the Civil War. However, at the end of the war, many Republicans wanted to punish the South severely. They were mistrustful of Southerners, comprising **Johnson**. He also did not agree with the group of the Republican Party called Radical Republicans as far as the unification of the nation was concerned. In southern states, they wanted to introduce military rules. **Johnson** wanted to enable the southern states to join the Union if they abolished slavery. Radical Republicans wanted full civil rights for the newly liberated Blacks in the South, but **Johnson** was trying to reject the attempt to protect the previous slaves. In 1867, the Radical Republicans established the Office for Tenure Supervision in the Congress, which forbade the President to dismiss officials without an agreement of the Senate. That meant that **Johnson** had to have a permission to dismiss his own officials. At the beginning of 1868, **Johnson** decided to ignore this Office. On February 21 he dismissed the Minister of War, **Edwin Stanton**, despite the fact that he did not get the permission from the Senate. **Johnson's** acts made the Congress furious. The House of Representatives members had been trying to dismiss him even before, but they failed. After this event, they investigated him once again. The main misdemeanour was the insult of the Office for Tenure Supervision by the means of dismissing **Stanton**. The members of the House of Representatives decided, by voting in the ratio of 126 for, and 47 against, to bring **Johnson** under the process of impeachment. On March 6, 1868 the Senate met at the proceedings as a Court to discuss his case. It meant that the President was supposed to appear in the Senate in a week to express his opinions on the charges. On March 13, 1868 the duty official called the President to stand in front of the commission. The door in the room opened, but the President was not seen. Instead, his lawyers entered the room to ask for more time to prepare the Presidential defence. Questions how to conduct the

proceedings were still unanswered. The Constitution ordained the Vice-President to chair proceedings in the Senate – besides the cases where the President was present. The Vice-President could not be a just judge since he was a potential successor of the President. So, it was the Head of the Supreme Court, who chaired the proceedings of the impeachment of the President. In case of removing **Johnson** from office, a member of the Senate would become the President, i.e. **Benjamin Wade**. Should **Wade** have the right to vote, though he did not have to be impartial? The Senate decided that he would have this right. It also decided that even the President's son-in-law – the senator representing Tennessee – would have the right to vote. On March 30, 1868 the **Johnson's** prosecuting attorneys from the House (called managers for prosecuting a public official) started expressing their opinions of the case. Seven managers had to convince the members of the Senate that the President had to be removed from office. Their speech uncovered the bitterness of proceedings. One of them – **George Boutwell** – claimed that **Johnson** was an accomplice in the assassination of **Lincoln**. "By the assassination he reached the presidential office", said **Benjamin Butler**, and "he was elected to this significant office due to the assassination, not by the people". By the means of linking **Johnson** with the assassination, **Butler** believed that the Senate would find **Johnson** guilty. However, **Johnson's** lawyers defended the President. They claimed that the President believed that he had the right to depose **Stanton**. They also claimed that the Office for Tenure Supervision had not acted according to the Constitution. So, the President could not follow it. **Johnson** was a very unpopular President. The papers all around the country were laughing at him. Voters were very disappointed of him. Majority of Republicans in the Congress were determined to depose him. Majority of people thought that the Senate would sentence **Johnson**, but six Republican senators stated that they would vote for acquitting the President. Their statement brought under pressure **Edmund Ross** – the Republican senator representing Kansas. He was one of the last senators who expressed how he would vote. **Ross** was rejecting **Johnson's** political opinions. He was warned that if he voted for acquitting **Johnson**, it would mean the end of his career. On May 16, 1868, during voting, he found him not guilty. As he wrote it later, "almost literally I was looking down into my grave". He believed that in this case the right was on his side.

Ross's voting saved **Johnson**. 19 senators found him not guilty, 35 found him guilty. To depose him, one vote was missing. If one senator had changed

his opinion, the President would have been removed from office. Shortly after proceedings, the congressmen started considering the process of impeachment with the President **Johnson** as a mistake. "It was not adequate as far as the carried misdemeanour was concerned", said **James G. Blaine**, who had voted for prosecuting the President. He said that to sentence **Johnson** could cause more damage than **Johnson** in fact did. The senator **Lyman Trumbull** said that in case of deposing the President, it would not have been him who would have been responsible for disagreements with the Congress. The Office for Tenure Supervision was partially closed down in 1887. In 1926 the Supreme Court declared the law unconstitutional. Even after many years following the **Johnson's** investigation some people felt that the power of presidential office was weakened. For the period of more than a hundred years no serious rejection of a President appeared. However, it appeared in the time of the President **Richard M. Nixon**. His problems started on June 17, 1972. On that day five men were caught while trying to break into the offices of the Democratic National Committee in Watergate apartments in Washington, D.C. **Nixon** was preparing for the presidential re-election as a candidate of the Republican Party. It has been found out that **Nixon's** campaign also involved the hiring of burglars, who broke into offices, and hid bugging devices there. New series of events started by arresting, and it put **Nixon** into more and more serious problems. The President and his associates were trying to disguise their involvement in the burglary. They bribed the burglars to be silent about their role. They forbade FBI² to continue in the investigation. The President was rejecting the proofs connected with the case. **Nixon** dismissed a special prosecutor who had been investigating the case. It was clear that the President was guilty. In July 1974, The Judicial Committee of the House of Representatives approved the articles for the process against **Nixon**. They accused him of spying, corruption, and obstructing justice. The articles of charges stated that **Nixon** in general appeared to be an untrustworthy President. The situation was leading to a situation that the House would remove the President from office. **Nixon** made the decision not to be investigated, and resigned from office on August 9, 1974. Despite the fact that the process was not carried out, the Watergate affair and **Nixon's** resignation disturbed the whole world. The senator **Sam Ervin** called it "the greatest tragedy ever suffered by this country". After the **Nixon's** resignation, the Vice-President

² Federal Bureau of Investigation

Gerald Ford became the President. A month later, **Ford** pardoned all the crimes **Nixon** was involved in, and forgave him the act that he had avoided a punishment.

Four years later, the Congress issued *Government Ethics*. This document provided a prosecutor with power to investigate charges against the President. This special prosecutor was later called an independent counsel. Even the President could not dismiss the counsel. This power was assigned to the prosecutor because **Nixon** had fired the prosecutor, who had been investigating him. By the dismissing, Nixon misused the authority of the President to influence legal affairs closely connected with him. This should be the prevention from some other similar misuses of power. An executive could not investigate their own officials. The Congress decided to revive this act every five-year period, and to improve the system.

Federal officials brought under the process of impeachment:

name	position	year	result
W. Blount	senator	1799	dismissed allegations
J. Pickering	judge	1803	removed from office
S. Chase	associate justice	1805	cleared from charges
J. H. Peck	judge	1831	cleared from charges
W. H. Humphreys	judge	1862	removed from office
A. Johnson	President of USA	1868	cleared from charges
W. W. Belknap	minister	1876	cleared from charges
Ch. Swayne	judge	1905	cleared from charges
R. W. Archbald	associate justice	1913	removed from office
G. W. English	judge	1926	resigned from office
H. Louderback	judge	1933	cleared from charges
H. L. Ritter	judge	1936	removed from office
H. E. Claiborne	judge	1986	removed from office
A. L. Hastings	judge	1988	removed from office
W. L. Nixon	judge	1989	removed from office
W. J. Clinton	President of USA	1998	cleared from charges

In 1998, **Bill Clinton** became the second President in the history of the USA who was criminally prosecuted. The **Clinton's** investigation came out of a long-term investigation concerning his realty transfers he had carried out before he became the President. In 1994, the department of justice started examining them. It was necessary to know whether the transactions money was used illegally for the purposes of his election campaign. The chief state counsel appointed an independent legal representative – **Kenneth Starr** to examine the affair. During the process, the main focus departed from the **Clinton's** transactions. Instead of that, **Starr** started pointing to the fact that **Clinton** falsely testified under oath about his involvements outside marriage. In January 1998, **Starr** started the official investigation concerning the President's involvements outside marriage. A few days later, **Clinton** rejected allegations about his relation with a young woman working in the White House, **Monika Lewinski**. Questions concerning the President's behaviour still remained. The investigation commission made the decision to examine this case. The jury was debating testimonies where people were accused of some crimes. It guaranteed proceedings in case there were enough pieces of evidence. On August 17, 1998, the President testified about his behaviour in front of the jury. He was the first President defending himself. He admitted that he had "improper physical relationship" with **Monika Lewinski**. The next evening he confessed to the whole nation. In September, **Starr** sent a detailed report to the Congress. It stated that the President **Clinton** was involved in the lies to cover his activities. In December, the Justice Commission of the House of Representatives impeached **Clinton**. Voting was carried out on December 19, 1998. He was accused of perjury and obstruction of justice in two articles concerning the criminal prosecution of a public official. In this way, **Clinton** became the first President after **A. Johnson** who had the proceedings in the Senate. But the **Clinton's** case was completely different from the **Johnson's** one. Though Johnson was extremely unpopular among voters, **Clinton's** popularity remained strong even after his investigation. Many Americans approved his work of the President, however, did not approve his behaviour in private. The **Clinton's** popularity probably influenced the management of his proceedings. Many senators decided not to protract the process. They did not want to spend much time by investigating the President, who had the support of many Americans. The proceedings took more than a month, and they were chaired by the Chief Justice of the Supreme Court of the USA, **William Rehnquist**. On February 12, 1999, the Senate was ready to vote. The duty

official read aloud the articles of charges.

Each of the misdemeanours – perjury and obstruction of justice – was voted apart. To remove **Clinton** from office, 66 of 100 senators had to find him guilty. Just 45 senators found him guilty of perjury. 50 senators found him guilty of the obstruction of justice and 50 found him not guilty. After announcing the voting results, **Rehnquist** stated: “This is to say that the case of **W. J. Clinton** is ruled and that he is acquitted of all the stated articles“. The proceedings were over. **Clinton** remained the President. In June 1999, the Congress did not restore the ethic ordinance for the government. Many people believed that the document caused more problems than it in fact was solving. The authority of the Congress to impeach public officials is rare now. Both processes with the Presidents split the Americans. The procedure of impeachment as such is very significant for the American political system. This process helps guarantee that the state officials and public officials will carry out their work honestly, and it makes it possible to remove from office the officials who betray the public confidence.

Immediately after the end of the **Clinton's** impeachment process, and in the period of some years following it, many suggestions how to improve the process appeared. The majority of suggestions tried to speed up the whole procedure, and to make it more effective. Some suggestions dealt with the shortening of a period between the allegation, investigation and prosecution. The changes concerning the assignments of senators to investigating commissions were suggested, mainly of those with judicial process experiences. Public opinion did not agree with creating the investigating commission of individuals outside the reach of election results. In case of investigating the American President, majority of Americans simply thought that the President should be interrogated by the public officials with an experience in a similar type of investigation, and who would not be able – in case of disagreement with their verdict – to become elected to representative organs in the coming elections. However, the greatest concerns appeared in connection with the political affiliation of investigators. Despite the declared independence, the political party affiliation can, of course, play its role in formulating a final verdict. A concluding recommendation of legislators should be an observation to use the procedure of impeachment just in really serious processes of breaking the law. In case of too frequent use of this instrument of controlling federal officials, its importance could be possibly decreasing, and in this way also even the credit of the legislative assembly. So, the process of impeachment should

function mainly as a general warning, a kind of permanent threat of sanctions in case of crossing the line of authority.

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