

January 20, 2020

Open Letter to United States Senators:

We, professors of constitutional law, write to clarify that the abuse of power by a president counts as an instance of impeachable high crimes and misdemeanors under the Constitution. That was clearly the view of the Constitution's framers. We provide only a few of the many statements made and examples invoked at the constitutional convention. On July 20, 1787, Governor Edmund Randolph of Virginia, representing that state at the Convention, stated specifically that "the propriety of impeachments was a favorite principle with him" because "[t]he Executive will have great opportunities of abusing his power." In Federalist 65, Alexander Hamilton defined "high crimes and misdemeanors" as "those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust."

In these definitions, the framers were building on English tradition, the same place from which they got the words "high crimes and misdemeanors." For example, in 1725, in a case the framers knew, Thomas, Earl of Macclesfield, was impeached by the House of Commons specifically for "Abuse of his Power" and "great Abuse of his Authority."

The constitutional logic of impeachment for the abuse of the power of the presidency is straightforward: The president has unique powers conferred by Article II of the Constitution. If he abuses those powers to gain personal advantage, whether electoral, financial, or otherwise, he wrongs not only his opponents but the Republic itself. Elections are one, but only one, means of removing such a president from office, and the framers understood that sometimes the threat to the Republic could be so great as to make it dangerous to wait.

Finally, the framers' use of the phrase "high crimes and misdemeanors" has long been understood to extend to abuses of power not specified in the U.S. Code. In 1833, Justice Joseph Story explained that there are "many" impeachable offenses, "not one of which is in the slightest manner alluded to in our statute book." As he put it, "political offences are of so various and complex a character, so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it."

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