

IMPEACH. To accuse; to charge a liability upon; to sue. To dispute, disparage, deny, or contradict; as, to impeach a judgment or decree; or as used in the rule that a jury cannot "impeach their verdict." *Wolfgram v. Schoepke*, 123 Wis. 19, 100 N. W. 1056. To proceed against a public officer for crime or misfeasance, before a proper court, by the presentation of a written accusation called "articles of impeachment."

Black's Law Dictionary, revised fourth edition

The Drastic Remedies

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Impeachment is not the only remedy provided by the Constitution where the integrity and conduct of the Chief Executive or his ability to govern, may be called into question.

The Constitution provides in Article I that the House of Representatives has sole power to institute impeachment of all Federal officials, and that the Senate has sole power to try the impeachment charges. The House moves by majority vote; then, in the Senate, a two-thirds vote is required to convict; and where the President is on trial, the Chief Justice of the United States must preside. The grounds for impeachment are: "treason, bribery, or other high crimes and misdemeanors." These latter words are not spelled out specifically, but in the trial of President Andrew Johnson, they were considered to mean offenses against honesty or moral integrity.

Article I also provides that a judgment of impeachment results not only in removal from office, but also in disqualification to hold any other "office of trust or honor." It is further provided that any person thus convicted shall additionally be liable to indictment, trial, judgment and punishment according to law.

But the Constitution also states specifically in Article II that: "In case of the removal of the President from office or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President . . ." There is therefore a constitutional distinction between impeachment and removal.

The concept of removal of the President is difficult to define in precise terms from the original text of the Constitution, and perhaps its authors intended that the concept should not be precisely defined and therefore subject to narrow or technical construction. But if the con-

stitutional definition of removal of a President was unclear, there are some guidelines in practice, in our history, and in the 25th Amendment.

On more than one occasion, removal of a Federal official has been accomplished by his resignation. This provides no guarantee that a proposed impeachment would be withdrawn or terminated, but except in one 1876 case involving a former Cabinet officer, resignation has had the result. It also has the effect of avoiding disqualification for any future position of trust or honor. This question has never come up in connection with any President, having been limited to Federal judges and high executive officers, but it suggests one possible solution.

Removal of a President or Vice President or both has been very clearly defined where the reason for removal is the inability of the official to function effectively. Mr. Nixon himself signed an agreement with President Eisenhower in 1958 providing for the procedure to be followed in the event of Presidential inability to manage the Government. The substance of that agreement was that if the President was unable to govern, he would so state, and the Vice President would serve as Acting President; if the inability was such—serious illness for example—that the President could not communicate with the Vice President, then the Vice President himself would decide the question of inability, and serve as Acting President, until the President himself determined that the inability had ended, at which point he would resume full exercise of the Presidential power.

The substance of this agreement, which, incidentally, was specifically endorsed by Robert Kennedy as Attorney General, in a formal opinion to President Kennedy on Aug. 2, 1961, became the 25th Amendment to the Constitution. Section 4 of the Amendment provides that the President can be removed by a written declaration, by the Vice President and a majority of either the Cabinet or an independent body designated by Congress for that

purpose, that the President is unable to discharge the powers and duties of his office, and it is not limited to disability because of physical or mental health. This points the way to an effective solution to the temporary problem the nation is facing.

Impeachment is the most drastic remedy for the most drastic offenses. Participation by the President in a cover-up of Watergate, if ever established beyond doubt, might be a violation of Section 1001 of Title 18 of the U.S. Code which makes willful and knowing cover-up by any means a crime. The summoning of a Federal judge, in the middle of the Ellsberg trial, to San Clemente where the judge was reportedly offered a high Federal office might also be sufficient grounds for impeachment in and of itself. But the 25th Amendment recognizes that, short of impeachment, there may be situations where the President should step aside, or be moved aside, until he can be effective and have the confidence he needs from the people to do his job.

The problem to be avoided is exactly the one which was foreseen by Alexander Hamilton on March 18, 1788, in the *Federalist* No. 70: "It often becomes impossible, amidst mutual accusations, to determine on whom the blame or the punishment of a pernicious measure, or series of pernicious measures ought really to fall. It is shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author."

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