

Impeachment Grounds

From a report on "The Law of Presidential Impeachment" by the Committee on Federal Legislation of The Association of the Bar of the City of New York.

It is our conclusion, in summary, that the grounds for impeachment are not limited to or synonymous with crimes (indeed, acts constituting a crime may not be sufficient for the impeachment of an officeholder in all circumstances). Rather, we believe that acts which undermine the integrity of government are appropriate grounds whether or not they happen to constitute offenses under the general criminal law. In our view, the essential nexus to damaging the integrity of government may be found in acts which constitute corruption in, or flagrant abuse of the powers of, official position. It may also be found in acts which, without directly affecting governmental processes, undermine that degree of public confidence in the probity of executive and judicial officers that is essential to the effectiveness of government in a free society. What specific acts meet this test will vary with circumstances, including the particular position in government held by the person charged. At the heart of the matter is the determination—committed by the Constitution to the sound judgment of the two Houses of Congress—that the officeholder has demonstrated by his actions that he is unfit to continue in the office in question.

The American constitutional system is one of fixed and overlapping tenures of office. Impeachment was not intended as a method by which a President could be turned out of office because Congress dislikes his policies. But the Framers granted the remedy of impeachment because they were unwilling to rely solely on periodic elections as the method of removing the unworthy from office. The debates clearly show that impeachment was regarded as

a way of removing those whose misconduct in office, whether criminal or not, was serious enough to warrant prompt removal. Our system handles purely political differences primarily by the system of fixed and frequent elections, and also by the various checks and balances built into the ongoing relations among the three branches. Where, however, serious elements of misconduct are involved, the Framers thought it necessary to provide a direct and immediate remedy.

The constitutional intention that impeachment not be treated as a partisan political weapon cannot be effectuated by attempting to limit to specific categories the range of presidential misconduct which would justify impeachment. The seriousness with which the Constitution impresses resort to these procedures should be respected in a different way. Congress should not impeach and remove a President except for conduct for which it would be prepared to impeach and remove any President. We emphatically disagree with the casual view of impeachment recently put forth by then-Congressman Gerald Ford, that "an impeachable offense is whatever a majority of the House of Representatives considers it to be . . ." And we likewise reject the view of impeachment suggested in the challenge of former Attorney General Kleindienst, testifying before a Senate committee, that "you don't need facts, you don't need evidence" to impeach the President, "all you need is votes." These statements bear no resemblance to the considered judgments of the Founding Fathers; they do not reflect their commitment to a government of constitutional principle. That the grounds for impeachment may not be limited to criminal acts, or otherwise defined by predetermined categories of conduct, does not mean that Congress should ignore its responsibility to principle in exercising its quasi-judicial powers of impeachment and removal.