

# Impeachment: High Crimes & Misdemeanors

Grades  
9–12

## Focus Question

**What constitutes an impeachable offense?**

## Lesson Objective

Students analyze documents and develop a framework for deciding whether an offense is impeachable.

## Civic Participation Practices

Fulfill social and political responsibilities associated with citizenship in a democratic society and interdependent global community by developing awareness of and/or engaging in the political process.

## Key Learning Standards

**9-10 RH 2:** Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop within a text.

**11-12 RH 2:** Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

## Resources/Materials

- *The U.S. Constitution and Impeachment*
- *Impeachable Offenses Document Set*

*continued on next page*

# Impeachment: High Crimes & Misdemeanors

(continued)

## Introduce the Lesson/Motivate Students

- Instruct students to read *The U.S. Constitution and Impeachment* and answer the following questions:
  - What process for impeachment is outlined in the Constitution?
  - Who can be impeached?
  - According to the Constitution, for what reasons can an individual be impeached?
  - What do you believe is meant by “high Crimes and Misdemeanors”?
- Chart student responses focusing on questions or points of clarification.

**NOTE TO TEACHERS:** It may be necessary to clarify that there are two steps to the impeachment process: first the House of Representatives—usually the judiciary committee—holds an inquiry to gather relevant facts. If they find that impeachable offenses have occurred, they draft an Article of Impeachment for each impeachable offense. The House of Representatives then votes on each Article of Impeachment. If a majority of House members vote to impeach on any article, then the individual is impeached. The process moves to the Senate where a trial is held to determine whether the impeached official will be removed from office. The House acts as the prosecution, the impeached official’s attorneys act as the defense, and the senators are the jury. If two-thirds of the senators vote in favor of any of the Articles of Impeachment passed by the House at the conclusion of the trial the impeached official is convicted and can be removed from office. Impeached officials can also be barred from holding federal positions in the future.

- Explain that the students will look closely at the reasons officials can be impeached and deepen their understanding of “high Crimes and Misdemeanors” by reading several different excerpts of works by legal scholars.

## Model/Teach

- Provide the following background to students:
  - The United States has a long history of federal impeachment. The oldest being the 1797 impeachment of Senator William Blount and the most recent taking place in 2010 with the impeachment and removal of Judge Thomas Porteous. In that span of time, the House impeached 19 federal officials. The earliest—Senator William Blount—was expelled by the Senate the day after the House impeached him. Blount remains the only member of Congress ever impeached because, unlike federal officials in the executive and judicial branches, members of Congress

*continued on next page*

# Impeachment: High Crimes & Misdemeanors

(continued)

are disciplined or expelled under a different part of the Constitution, Article I Section 5.<sup>1</sup> Of the remaining 18 impeached federal officials, three resigned before a trial in the Senate could begin, the Senate acquitted seven, and eight were convicted—all judges. Of those officials who were impeached by the House, two were U.S. Presidents: Andrew Johnson (1868) and Bill Clinton (1998). Both Johnson and Clinton were acquitted during Senate impeachment trials. Two more U.S. Presidents: James Buchanan (1860) and Richard Nixon (1974) also faced impeachment inquiries during their administrations. The House committee investigating Buchanan was unable to establish grounds to impeach, and Nixon resigned before The House could vote on whether to impeach. Recently, on December 5, 2019, the Speaker of the House of Representatives, Nancy Pelosi, indicated that the House was going to begin drafting Articles of Impeachment against President Donald J. Trump.

- Distribute the *Impeachable Offenses Document Set* so that students have at least one of each document represented in their group.
- Display the following questions:
  - According to the author, what is meant by “high Crimes and Misdemeanors”?
  - What actions and conduct are impeachable according to the author?
  - What actions and conduct are not grounds for impeachment according to the author?

## Group/Independent Work

- Instruct students to read their excerpt from the *Impeachable Offenses Document Set*, recording a brief summary and answers to the questions above.

**NOTE TO TEACHERS:** Alternatively, you may wish to give the same excerpt from the *Impeachable Offenses Document Set* to each group so that students can work together to read the same document, rearranging them into groups with students who read other documents afterward.

- Once complete, ask students to discuss their excerpts by answering the following questions:
  - What key points or arguments does the author make in this excerpt?
  - According to the author of your text, what is meant by “high Crimes and Misdemeanors”?
  - What actions and conduct are impeachable according to the texts?
  - What actions and conduct are not grounds for impeachment according to the texts?
- Have students work in groups to construct an argument that answers the question, “What actions and conduct constitutes an impeachable offense?”

<sup>1</sup> U.S. Senate Historical Office, *United States Senate Election, Expulsion and Censure Cases: 1793–1990* (Washington: Government Printing Office, 1995), pp. 13–15.

# Impeachment: High Crimes & Misdemeanors

*(continued)*

## Wrap-Up

- Invite students to share their arguments for what actions and conduct constitute an impeachable offense.

## Additional Resources

- *Impeachment: Democracy's Ultimate Sanction*  
<https://www.92y.org/archives/democracys-ultimate-sanction-impeachment-process-purpose>

# The U.S. Constitution and Impeachment

## **Article I, Section 2:**

The House of Representatives . . . shall have the sole Power of Impeachment.

## **Article I, Section 3:**

The Senate shall have the sole Power to **try** all Impeachments. When sitting for that Purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no Person shall be convicted without **Concurrence** of two-thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment according to Law.

## **Article II, Section 2:**

The President . . . shall have Power to grant Reprieves and Pardons for offenses against the United States, except in Cases of Impeachment.

## **Article II, Section 4:**

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.

## **Article III, Section 2:**

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury . . .

## **Glossary:**

**try:** to conduct a trial

**Concurrence:** agreement

---

**Citation:** “The Constitution of the United States: A Transcription.” National Archives. June 19, 2019, accessed September 27, 2019, <https://www.archives.gov/founding-docs/constitution-transcript>.

## Impeachable Offenses Document Set: Understanding “High Crimes and Misdemeanors”

*Yale Law School Professor, Akhil Reed Amar, explains what is meant by “high Crimes and Misdemeanors” in Article II, Section 4 of the Constitution in this excerpt.*

With his blunt references to “culprits” and “punishment,” **Wilson** doubtless meant to remind his audience of one of the Constitution’s essential instruments for assuring executive-branch accountability to the American people: the high court of impeachment. Of course, Article II’s detailed provisions governing presidential selection and succession aimed at preventing a corrupt or easily corruptible leader from ever reaching the pinnacle of power. Yet even the best of selection systems might occasionally fail and even a well-chosen president might sometimes fall. Thus, the Constitution took care to fashion a peaceful and politically accountable mechanism for removing a president before the end of his fixed term. . . .

In America . . . the head of state could be ousted whenever he committed any “high Crimes [or] Misdemeanors” that warranted his immediate removal. In context, the words “high . . . Misdemeanors” most sensibly meant high misbehavior or high misconduct, whether or not strictly criminal. Under the Articles of Confederation, the states mutually pledged to extradite those charges with any “high misdemeanor,” and in that setting the phrase apparently meant only indictable crimes. The Constitution used the phrase in a wholly different context, in which **adjudication** would occur in a political body lacking general criminal **jurisdiction** or special criminal-law competence. Early drafts in Philadelphia had provided for impeachment in noncriminal cases of “mal-practice or neglect of duty” and more general “corruption.”

During the ratification process, leading Federalists hypothesized various noncriminal actions that might rise to the level of high misdemeanors warranting impeachment, such as summoning only friendly senators into special session or “giving false information to the Senate.” In the First Congress, **Madison** contended that if a president abused his removal powers by “**wanton** removal of **meritorious** officers” he would be “impeachable . . . for such an act of mal-administration.” Consistent with these public **expositions** of the text, House members in the early 1800s impeached a pair of judges for misbehavior on the bench that fell short of criminality. The Senate convicted one (John Pickering) of intoxication and indecency, and acquitted the other (Samuel Chase) of **egregious** bias and other judicial **improprieties**.

An impeachment standard transcending criminal-law technicalities made good structural sense. A president who ran off on a frolic in the middle of a national crisis demanding his urgent attention might break no criminal law, yet such gross **dereliction** of duty imperiling the national security and betraying the national trust might well rise to the level of disqualifying misconduct. . . .

---

**Citation:** Akhil Reed Amar, *America’s Constitution: A Biography*, (New York: Random House, 2005). 198, 200-201.

## Understanding “High Crimes and Misdemeanors” (continued)

The word “high” surely meant what it said in the Article II impeachment clause. Elsewhere the Constitution omitted the word “high” in describing “Treason, Felony and Breach of the Peace” in the Article I arrest clause and “Treason, Felony, or other Crime” in the Article IV extradition clause. But how high was “high”? The Article II clause gave readers some guidance by giving two specific examples of impeachable misconduct: “Treason” and “Bribery.” Both were “high” offenses indeed. “Treason”—defined in detail elsewhere in the Constitution—meant waging war against America or betraying her to an enemy power. “Bribery”—secretly bending laws to favor the rich and powerful—involved official corruption of a highly **malignant** sort, threatening the very soul of a democratic republic committed to equality under law. In the case of a president who did not take bribes but gave them—paying men to vote for him—the bribery would undermine the very legitimacy of the election that brought him to office.

Because reasonable people might often disagree about whether a particular president’s misconduct approximated “Bribery” or “Treason” in moral gravity or dangerousness to the republic, the Constitution prescribed not only a linguistic standard but also a legal structure. The House and Senate, comprising America’s most distinguished and accountable statesmen, would make key decisions. Acting under the American people’s watchful eye, these leaders would have strong incentives to set the bar at the right level. If they defined virtually anything as a “high” misdemeanor, they and their friends would likely fail the test, which could one day return to haunt them. If, instead, they ignored plain evidence of gross presidential malignance, the apparent political corruption and back scratching might well disgust the voters, who could register popular outrage at the next election.

### Glossary:

**Wilson:** Founding Father, James Wilson

**adjudication:** process of making a formal decision about a problem or dispute

**jurisdiction:** power to make legal decisions and judgements

**Madison:** Founding Father, James Madison

**wanton:** without foundation or reason

**meritorious:** earned, entitled, praiseworthy

**expositions:** comprehensive explanations

**egregious:** outstandingly bad

**improprieties:** misconduct

**dereliction:** abandonment

**malignant:** vile, nasty

**Citation:** Akhil Reed Amar, *America’s Constitution: A Biography*, (New York: Random House, 2005). 198, 200-201.

## Impeachable Offenses Document Set: British Antecedents

*Constitutional legal scholar, Cass Sunstein, discusses British impeachment and its influence on the formulation of American Impeachment in the excerpt that follows.*

---

At least since 1635, impeachment had been discussed intensely in the colonies. Before and after independence, Americans adopted concrete, and quite novel, understandings of what the impeachment weapon was all about. Something remarkable happened here, because in England, impeachment had fallen into near-disuse in the seventy years before the Constitutional Convention. . . .

. . . the English idea of impeachment arose largely because its **objects** were free from the reach of conventional criminal law. Parliament made the ministers and functionaries of the King subject to impeachment for public offenses. The phrase “certain high treasons and offenses and **misprisions**” appeared as early as 1386, in an impeachment proceeding, but on one account, the precise term “high crimes and misdemeanors” did not appear until 1642, after which it was regularly used. Under English law, the House of Commons took the term “misdemeanor” to refer to distinctly public misconduct, including but not limited to actual crimes. Thus “high Crimes and Misdemeanors,” the standard basis for impeachment, represented “a category of political crimes against the state.” Impeachment was a political weapon, used to challenge official wrongdoing. . . .

In English law, there was some ambiguity in the use of the word “high.” Did the term refer to the seriousness of the offense, or to the nature of the office against which the proceeding was aimed? Some of the actual practice suggests the term referred to both: for impeachment to be appropriate, a holder of high office had to do something terrible. As practice unfolded, “high Crimes and Misdemeanors” could mean serious crimes, but it could also mean serious offenses that were not in technical violation of criminal law. **Egregious** misconduct, as in the form of committing the nation to “an **ignominious** treaty,” could count as a legitimate basis for impeachment in England.

For present purposes, the more important point is that the great cases involving charges of impeachable conduct in England usually involved serious abuses of the authority granted by public office, or, in other terms, the kind of misconduct in which someone could engage only by virtue of holding such an office. . . .

As the American tradition developed, the concern was abuse of official power, just as in England—but it was understood in distinctly **republican** terms. In the colonies, impeachment was a mechanism by which representative institutions could start the process for removing

---

**Citation:** Cass Sunstein, *Impeachment: A Citizen’s Guide*, (New York: Penguin, 2019). 39-42.



## British Antecedents (continued)

---

executive and judicial officers for intolerable wrongdoing. There were early efforts to impeach people for purely political reasons, as captured in the idea that officials could be impeached for violations of “popular will” or for showing a “dangerous tendency.” But before the Revolution, the dominant idea was that impeachment would be limited to serious criminality or the abuse or misuse of the responsibilities of high office.

In the crucial years between 1755 and the signing of the Declaration of Independence, impeachment was used as a weapon against abuses of authority that came from imperial policy. In this way, impeachment was a tool for the exercise of popular sovereignty, ensuring a close link between impeachment and republicanism in the colonies.

. . . After national independence, there was a great deal of activity under the new provisions. Impeachment was used against officials who had engaged in fraud, extortion, bribery, mismanagement of funds, and even bullying of ordinary citizens. Neglect of duty and incompetence were also taken to be sufficient grounds for impeachment—but only if they rose to a level that was thought to endanger the state. Many people believed that one of the virtues of the impeachment mechanism was that, in the view of its availability, “people did not have to take their complaints against officeholders into the streets.”

---

### Glossary:

**objects:** people whom impeachment was directed

**misprisions:** hiding knowledge of a treasonable act or felony

**egregious:** outstandingly bad

**ignominious:** shameful or disgraceful

**republican:** set of ideas that individuals are elected to represent citizens and the state is a public good, not private property belonging to a monarch

---

**Citation:** Cass Sunstein, *Impeachment: A Citizen's Guide*, (New York: Penguin, 2019). 39-42.

## Impeachable Offenses Document Set:

# Must Impeachable Offenses Be Criminal?

*Harvard Law School Professor, Laurence Tribe, discusses some of the elements involved in identifying high Crimes and Misdemeanors in impeachment proceedings.*

... it's helpful to consider a frequently asked question about "high Crimes and Misdemeanors": Can presidents be impeached for misdeeds that aren't crimes?

Our analysis of that issue begins with one of US history's greatest, weirdest villains. He did not throw away his shot. On July 11, 1804, Vice President Aaron Burr mortally wounded former Treasury Secretary Alexander Hamilton at a duel in Weehawken, New Jersey. The tale is now widely told, thanks to Lin-Manuel Miranda's musical *Hamilton*. Less well known is what followed.

As biographer Ron Chernow reports, "when a handwritten notice of Hamilton's death went up at the Tontine Coffee House [in New York], the city was transfixed with horror." The New York Supreme Court and Bank of New York were draped in black, and for a full month. New Yorkers sported black armbands to mourn their fallen hero. On July 14, 1804, Hamilton's two-hour funeral procession brought the city to a halt for a slow-motion spectacle of silent despair.

And fury. As outrage persisted, New York and New Jersey **indicted** Burr for murder. Local papers damned the vice president as a heartless traitor and sadistic coward. His surreal confidence finally broken, Burr fled south to Georgia.

You might think that this murder would at least raise a question of impeachment. But you'd be wrong: Congress never considered impeaching Burr. To the contrary, eleven US senators formally asked the governor of New Jersey to drop all charges. This was necessary, they explained, "to facilitate the public business by relieving [Burr] from the peculiar embarrassments of his present situation, and the Senate from the distressing **imputation** thrown on it, by holding up its President to the world as a common murderer." (As vice president, Burr also served as president of the Senate.) ... In the end, Burr was never punished by Congress for killing Hamilton. New Jersey dropped its murder charge, and Burr was convicted by New York only for the misdemeanor of dueling. ... Even given the culture of dueling that persisted in the early 1800s, Congress's response to the Burr-Hamilton incident is profoundly disturbing.

... Nonetheless, this tale gestures to an important difference between criminality and impeachability. Across history, not all crimes by federal officials have been seen as impeachable. This was as true for Burr in 1804 as it was for Richard Nixon in 1974, when the House Judiciary Committee rejected an article of impeachment for tax fraud. The inverse of this principle is also true: impeachment doesn't require proof of a crime.

Consider the case of Judge Alcee Hastings. In 1989, the Senate convicted and removed Hastings for conspiring to accept bribes—even though he had already been *acquitted* in a criminal trial of that

---

**Citation:** Laurence Tribe and Joshua Matz, *To End a Presidency: The Power of Impeachment*, (New York: Hachet Book Group, 2018). 59-63.

## Must Impeachable Offenses be Criminal? (continued)

same offense. . . These and other examples make clear that impeachment and criminal punishment are distinct. Some lawyers, however, continue to insist that an official can be impeached only if the official has committed a crime. Although this restrictive position enjoyed a measure of support in the early 1800s, it has long since been widely and convincingly rejected. Indeed, the first successful judicial impeachments of the twentieth century—Judge Robert Archbald (1913) and Judge Halsted Ritter (1936)—both involved misconduct that didn’t break any criminal laws.

. . . Starting with history, there’s virtually no evidence that the phrase “high Crimes and Misdemeanors” was widely understood in the 1780s to mean indictable crimes. . . . the Framers were concerned with abuse of power, corruption, and injury to the nation. At no point did any delegate link the ultimate safeguard against presidential betrayal to intricacies of a criminal code . . . In fact, delegates did the opposite, invoking an array of broad and adaptable terms as grounds for removal. When those grounds were narrowed to Bribery and Treason, the phrase, “high Crimes and Misdemeanors” was added to guarantee that impeachment could address any “great and serious offence.”

. . . A more capacious view of impeachment is also supported by other sources. . . . from numerous state ratification conventions. There, delegates sweepingly **opined** that impeachment would be appropriate if an official “deviates from his duty” or “dare[s] to abuse the power vested in him by the people.” This position was echoed by leading minds of the era. In *Federalist* No. 65, Hamilton argued that impeachable offenses are defined by “the abuse or violation of some public trust.” In that sense, he reasoned, “they are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.” A few years later, Constitutional Convention delegate James Wilson echoed Hamilton’s point: “Impeachments, and offences and offenders impeachable, come not . . . within the sphere of ordinary **jurisprudence**. They are founded on different principle, are governed by different **maxims**, and are directed to different objects.”

These teachings are confirmed several times over by the Constitution’s structure. Consider again the Bill of Attainder Clause, which bans legislative punishment of particular individuals. If impeachments were exclusively about proving that the president committed a specific crime, then the Impeachment Clause would be at war with the basis for that rule, since it authorizes a form of trial and punishment by legislature. This tension dissipates, however, if impeachment is seen as a legislative remedy for *any* great and dangerous offense against the nation. Viewed in this light, impeachment is a fundamentally political process with a forward-looking and preventative focus. It is not a process through which Congress decides whether a particular statutory crime occurred and whether removal is warranted as a punishment.

### Glossary:

**indict:** formally accuse of or charge with a crime

**jurisprudence:** legal thinking

**imputation:** accusation

**maxim:** saying

**opine:** believe

**Citation:** Laurence Tribe and Joshua Matz, *To End a Presidency: The Power of Impeachment*, (New York: Hachet Book Group, 2018). 59-63.