

**HANDBOOK OF AMERICAN CONSTITUTIONAL LAW**  
BY HENRY CAMPBELL BLACK, M.A., 1910

Sections 83-85, Pages 136-139

**IMPEACHMENT**

**83. Impeachment proceedings, resulting;, upon conviction, in removal from office, may be instituted against**

- (a) The President.**
- (b) The Vice-President,**
- (c) All civil officers of the United States.**

**84. The following offenses render the perpetrator liable to prosecution and trial by impeachment:**

- (a) Treason.**
- (b) Bribery.**
- (c) Other high crimes and misdemeanors.**

**85. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold office under the United States.**

The federal constitution contains the following provisions relating to the subject of impeachment: The President, the Vice-President, and all civil officers of the United States may be removed from office on impeachment for, and conviction of, treason, bribery, and other high crimes and misdemeanors. The house of representatives has the sole power of impeachment, and the senate the sole power to try all impeachments. When sitting for that purpose, they are to be on oath, or affirmation. When the President is tried, the chief justice shall preside. No person shall be convicted without the concurrence of two-thirds of the senators present. Judgment in case 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. By an express provision of the constitution, the right of trial by jury does not extend to cases of impeachment.

The persons liable to impeachment under the federal constitution are the President, the Vice-President, and "all civil officers of the United States." This excludes, in the first place, all private and unofficial persons. In the next place, it excludes all officers of the army, navy, and marine corps, because they cannot properly be called "civil" officers, and because they are triable for offenses by courts martial and under the laws of war. It is also settled, by a legislative precedent, that a senator of the United States is not liable to impeachment. In general, so far as the matter can be said to be definitely settled, it appears that the officers liable to this process are those who are commissioned by the President (as provided by section 3, art. 2, of the constitution) excepting those employed in the land and naval forces, but including all the federal judges.<sup>80</sup>

<sup>80</sup> Private citizens are not amenable to Impeachment; nor can articles of Impeachment be preferred against a person after he has gone out of office..State v. Hill, 37 Neb. 80, 55 N. W. 794, 20 L. R. A. 573. Bee "States," Deo. Dig (Key No.) | 52; Cent. Dig. § 51.

Treason and bribery are well defined crimes. But the phrase "other high crimes and misdemeanors" is so very indefinite that practically it is not susceptible of exact definition or limitation, but the power of impeachment may be brought to bear on any offense against the constitution or the laws which, in the judgment of the house, is deserving of punishment by this means or is of such a character as to render the party accused unfit to hold and exercise his office. It is of course primarily directed against official misconduct. Any gross malversation in office, whether or not it is a punishable offense at law, may be made the ground of an impeachment. But the power of impeachment is not restricted to political crimes alone. The constitution provides that the party convicted upon impeachment shall still remain liable to trial and punishment according to law. From this it is to be inferred that the commission of any crime which is of a grave nature, though it may have nothing to do with the person's official position, except that it shows a character or motives inconsistent with the due administration of his office, would render him liable to impeachment. It will be perceived that the power to determine what crimes are impeachable rests very much with congress. For the house, before preferring articles of impeachment, will decide whether the acts or conduct complained of constitute a "high crime or misdemeanor." And the senate, in trying the case, will also have to consider the same question. If, in the judgment of the senate, the offense charged is not impeachable, they will acquit; otherwise, upon sufficient proof and the concurrence of the necessary majority, they will convict. And in either case, there is no other power which can review or reverse their decision.<sup>81</sup>

The constitution provides that the judgment, in cases of impeachment, shall not extend further than to removal from office and disqualification from further office. Since it also provides that the officers who are subject to this process shall be removed from office upon conviction under articles of impeachment, it follows that the party accused, if he is found guilty, must be adjudged to be removed from his office. But it rests in the discretion of the senate whether or not to add to this sentence the judgment of disqualification. The nature of this punishment is political only. Conviction upon impeachment is the single case in which the pardoning power of the President cannot be exercised.

<sup>81</sup> Where, in an impeachment proceeding, the act of official delinquency consists in the violation of some positive provision of the constitution or a statute, which is denounced as a crime or misdemeanor, or where it is a mere neglect of duty, willfully done, with a corrupt intention, or where the negligence is so gross, or the disregard of duty so flagrant, as to warrant the inference that it was willful and corrupt, it is a misdemeanor in office. But where such act results from a mere error of judgment or omission of duty, without the element of fraud, or where the alleged negligence is attributable to a misconception of duty, rather than a willful disregard thereof, it is not impeachable, although it may be highly prejudicial to the interests of the state. *State v. Hastings*, 37 Neb. 96, 55 N. W. 774. See further, as to the question what offenses are impeachable, *Pom. Const. Law*, §§ 717-727; 1 *Story, Const. f§* 785, 796-805; *Miller, Const. pp.* 171, 214. With respect to the introduction of evidence and the quantum of proof required to warrant a conviction, impeachment is essentially a criminal prosecution; hence the guilt of the accused must be established beyond a reasonable doubt. *State v. Hastings*, 37 Neb. 96, 55 N. W., 774. See "States," *Dec. Dig.* (Key No.) § 5i; *Cent. Dig.* { 57. i§ 83-85)