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Worthy of discussion

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I have a question and a few comments maybe for the TA's.

An interesting question arose in my mind during one of the lectures where the topic of impeachment of the president was broached by the professor.

He explained that the reason why the vice president didn't head the impeachment process of the president, was because of the obvious potential conflict of interest that would exist. That the vice president would stand to gain if the president was dethroned. Supposedly for that reason the Chief Justice would preside, and in so doing eliminate the conflict of interest.

Question:

I am wondering how that would eliminate the conflict of interest. Doesn't the president put the Supreme Court justices in office?

Veto:

On the topic of veto, if congress ratifies a law and the president vetos it, what stops congress from passing it the second time? Congress would have obviously had the majority quorum the first time right?

Is there a conflict of interest in how judges are selected from the purview of the Constitution?

How can we expect impartial justice from a judiciary system that puts judges in office through political appointment? Wouldn't that put the judges in an awkward predicament of having to push the agenda of their sponsors?

What mechanisms does the constitution have in place to counteract this, if indeed this would pose a concern?

I am enjoying the class.

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Michael Scott Signature Track · 17 hours ago 🔗

The Chief Justice presides over the trial of the President in the Senate as he has a lifetime position and will not improve his position as long as he does nothing impeachable. Overriding a Presidential veto takes a 2/3 vote in both the House and Senate. Then this legislation becomes law over the objections of the President.

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Razvan Dobrescu · 15 hours ago 🔗

I think a Law expert can answer your question very precisely. We can try to ask the profesors directly. You have a good point.

I would like to give you a different answer.

I think the answer to your question is Relative.

Depends pretty much if you are in Italy, Switzerland or Democratic republic of Congo.

There are as many versions of Democracy around the world :)

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Albert Strong · 14 hours ago 🔗

Sir:

There is another thread on impeachment which directly deals with your questions on impeachment and the Chief Justice. There are several useful posts so here is the link and I hope it is helpful.

https://class.coursera.org/conlaw-001/forum/thread?thread_id=2149

As to the question of veto already correctly answered by Micheal: The Constitution does provide the Congress with a chance for a 2nd vote, however the bar for passage is raised from a Majority vote (a quorum being present) to a super-majority vote of 2/3 (a quorum being present) -- I take it from

the phrasing of your question you included the quorum as part of the question.
relevant Constitution text below:

Article I, section 7

...Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Here is a Congressional Research Service report detailing the procedures in each Chamber:

<http://www.senate.gov/CRSReports/crs-publish.cfm?pid='0DP%2BP%2CC%3E%23P%20%20%0A>

As for your Third Question: Yeah, that is a problem isn't it. Thus, there are so many fights over judicial nominations, especially those to the Supreme Court.

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Adrian · 6 hours ago

I have the Jefferson Manual, if wanted i can send paste the link to where I have it posted online below, if asked.

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Albert Strong · 3 hours ago

I have a senate link to a pdf which is clunky to use, is your more useful.....and I should note for full disclosure that **Riddicks** rules and procedure are the current updated practices.

Jefferson's manual:

<http://www.senate.gov/artandhistory/history/resources/pdf/SDoc103-8.pdf>

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Anonymous · 5 hours ago

All very useful commentary but none address the question of the conflict of interest that arguably exists when a court official selected and nominated by the president presides thereafter over presidential impeachment. Judging the person that got them the job seems to put the judge in a slight predicament. Doesn't it?

Article two

Section. 2.

*The **President** shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.*

*He shall have Power, by and **with the Advice and Consent of the Senate**, to make Treaties, provided two thirds of the Senators present concur; and **he shall nominate**, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, **Judges of the supreme Court**, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments*

Anytime that a party to a trial appoints the judge it seems arguably obvious that the judge will not be able to be as impartial as if the judge had no connection to any of the parties.

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Lori A Decker · 3 hours ago

I see your point. It would become a problem only if the impeachment trial happened to be that particular President who nominated that particular Chief Justice. Hasn't happened yet, but if it ever occurs, we'll deal with it.

My guess would be that the Chief Justice would recuse him/herself and appoint another justice, perhaps by seniority (farthest removed from the accused).

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[+ Comment](#)


Adrian · 3 hours ago

Administrative Procedure Act of 1946, which reverted back to before 1776, under the Administration of

the Crown

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Michael Scott Signature Track · 3 hours ago 

Administrative Procedure Act of 1946 - Public Law 404 - 79th Congress.

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Albert Strong · 11 minutes ago 

Sir: As you correctly point out:

Anytime that a party to a trial appoints the judge it seems arguably obvious that the judge will not be able to be as impartial as if the judge had no connection to any of the parties.

Note: there is an important relevant quotation at the end of this post if you want to skip to that and come back here later.

This is lengthy but I hope it sheds some light on your question.

I have to agree with you. We have no precedent for this to date. Fortunately for us, there have been only two cases where the impeachment of a President resulted in a trial in the Senate, and neither time was the Chief Justice appointed by the President that was on trial.

Since the appointment of Chief Justice is considered a lifetime appointment and Presidents are term limited, the chances of this conflict arising is substantially reduced by chance. But that does not resolve the possible conflict you point out should it arise.

I considered as others have that the Chief Justice may rescue himself but since the Constitution does not provide for a remedy allowing for his replacement, and no precedent in practice has been set, that situation you set forth may occur in the future.

However, the saving grace to this point is that the Chief Justice presiding in this trial is by Senate practice, largely a ceremonial role akin to the Vice President's role as President of the Senate. The VP may vote in the cases of deadlocks (tie votes) under normal Senate Procedure, however, the Chief Justice has no vote as the vote to remove the President is a super-majority of 2/3, and mathematically cannot be a tie.

The question of whether the Chief Justice may vote in the event of votes on other procedures during a trial has never been tested and thus there is no precedent as yet.

Trials of Impeachment are not criminal trials as per the constitution and can only result in the President being removed from office or exonerated. Senate trials are conducted by normal courtroom procedures. They are conducted as per Rules of the Senate and by Constitutional mandate cannot be questioned by any other government entity. Impeachment Trials conducted by procedures set forth in

Senate Rule XI.

The US Senate website provides a long history of impeachment trials conducted by the Senate:

http://www.senate.gov/artandhistory/history/common/briefing/Senate_Impeachment_Role.htm

Floyd Riddick, longtime **Senate Parliamentarian** is the author of *Riddick's Senate Procedure*, the definitive work on the Senate Procedures and kept current by the present Senate Parliamentarians. Mr. Riddick lead the effort to update and implement the current **Senate Rule XI**.

Mr. Riddick gave a long oral history about Impeachment to the Senate Historian Don Richie which is posted on the Senate website with provides some insight into the Chief Justice's role in Senate Trials. I have a excerpt here with highlights and a link to the full interview below which begins by talking about the trial of Andrew Johnson and Chief Justice Chase:

+++++

Richie:

The chief justice is not as familiar with the precedents of the Senate, and you pointed out that Chief Justice Salmon Chase was quite indignant when the Senate seemed to be acting independently.

Riddick:

And overruled him.

Richie:

And I would think that the current. chief justice would have bristled a little bit at the Senate presuming to tell him anything. It would have put you in a very difficult position.

Riddick:

Well, I'm not sure. My reaction would be that the chief justice, on that very grounds, would delight in the parliamentarian assisting him because the Senate would feel then that they were getting the same kind of advice for the procedure for the impeachment that they themselves would get when acting on legislation. This raises an interesting question that I informed the senators about when they were discussing these aspects, namely that Chase himself had said when the impeachment rules were not sufficient to cover the situation that he would fall back on the rules of the Senate for his guidance.

So I would assume that the chief justice, whether he always followed the advice of the parliamentarian or not, would at least want him there to give him the benefit of what the practices of the Senate had been, and then *he would have the same right that all presiding officers have to ignore the advice of the parliamentarian and rule as he wanted. But generally speaking I think he would find, just like the senators find, that it's better to follow the practices and precedents of the Senate which are told him by a non-political person, rather than to go out on a limb on his own, as Chase did frequently, and get overruled by the Senate. And there's no question but what the vote of the Senate is going to determine the procedure, regardless of what the chief justice would rule, even though he be the presiding officer for such an impeachment trial.*

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Albert Strong · 6 minutes ago

A better link to the Gov. Printing Offices copy of Procedures of the Senate -- the GPO page is below and the intro page notes:

Riddick spent seven years compiling the first edition of a Senate Procedure, a compilation of all Senate precedents since 1884, which was first published in 1958. It was last revised and updated in 1992 and published as Senate Document 101-28. ***It is considered the bible*** of U.S. Senate practice and procedure.

[Riddick's Senate Procedures](#)

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