

Sec. 4—Impeachment

The Chase Impeachment

The issue of the scope of impeachable offenses was early joined as a consequence of the Jefferson Administration's efforts to rid itself of some of the Federalist judges who were propagandizing the country through grand jury charges and other means. The theory of extreme latitude was enunciated by Senator Giles of Virginia during the impeachment trial of Justice Chase. "The power of impeachment was given without limitation to the House of Representatives; and the power of trying impeachments was given equally without limitation to the Senate. . . . A trial and removal of a judge upon impeachment need not imply any criminality or corruption in him . . . [but] nothing more than a declaration of Congress to this effect: You hold dangerous opinions, and if you are suffered to carry them into effect you will work the destruction of the nation. We want your offices, for the purpose of giving them to men who will fill them better."⁸⁶⁰ Chase's counsel responded that to be impeachable, conduct must constitute an indictable offense.⁸⁶¹ The issue was left unresolved, Chase's acquittal owing more to the political divisions in the Senate than to the merits of the arguments.⁸⁶²

Other Impeachments of Judges

The 1803 impeachment and conviction of Judge Pickering as well as several successful 20th century impeachments of judges appear to establish that judges may be removed for seriously questionable conduct that does not violate a criminal statute.⁸⁶³ The articles on

HOFFER AND N.E.H. HULL, *IMPEACHMENT IN AMERICA, 1635–1805* (1984); JOHN R. LABOVITZ, *PRESIDENTIAL IMPEACHMENT* (1978); 3 DESCHLER'S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES, ch. 14, § 3 "Grounds for Impeachments," H.R. Doc. No. 661, 94th Cong. 2d Sess. (1977); Charles Doyle, *Impeachment Grounds: A Collection of Selected Materials*, CRS Report for Congress 98–882A (1998); and Elizabeth B. Bazan, *Impeachment: An Overview of Constitutional Provisions, Procedure, and Practice*, CRS Report for Congress 98–186A (1998).

⁸⁶⁰ 1 J. Q. ADAMS, *MEMOIRS* 322 (1874). See also 3 HINDS' PRECEDENTS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES §§ 2356–2362 (1907).

⁸⁶¹ 3 HINDS' PRECEDENTS at § 2361.

⁸⁶² The full record is *TRIAL OF SAMUEL CHASE, AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES* (S. Smith & T. Lloyd eds., 1805). For analysis of the trial and acquittal, see Lillich, *The Chase Impeachment*, 4 *AMER. J. LEGAL HIST.* 49 (1960); and WILLIAM H. REHNQUIST, *GRAND INQUESTS: THE HISTORIC IMPEACHMENTS OF JUSTICE SAMUEL CHASE AND PRESIDENT ANDREW JOHNSON* (1992). The proceedings against Presidents Tyler and Johnson and the investigation of Justice Douglas are also generally viewed as precedents that restrict the use of impeachment as a political weapon.

⁸⁶³ Some have argued that the constitutional requirement of "good behavior" and "high crimes and misdemeanors" conjoin to allow the removal of judges who have engaged in non-criminal conduct inconsistent with their responsibilities, or that the standard of "good behavior"—not that of "high crimes and misdemeanors"—should govern impeachment of judges. See 3 DESCHLER'S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES, ch. 14, §§ 3.10 and 3.13, H.R. Doc. No. 661, 94th Cong. 2d Sess. (1977) (summarizing arguments made during the impeachment investigation of Justice William