

Handout B: Impeachment in U.S. History

The Senate has tried three presidents: Andrew Johnson, Bill Clinton, and Donald Trump. They were all acquitted because the prosecuting attorneys failed to convince two-thirds of the senators present of their guilt. A fourth president, Richard Nixon, resigned when it became clear that the House would impeach him and the Senate would find him guilty of the charges against him.

Andrew Johnson

Andrew Johnson became president upon Abraham Lincoln's death. He was hopeful about restoring the Union in a manner that would be lenient toward the South and preserve many powers of the states. Johnson saw restoration of the southern states as his responsibility. While Congress was not in session in 1865, Johnson quickly moved to readmit southern states on the basis of their ratification of the Thirteenth Amendment, which abolished slavery. Lacking congressional support or political skills, he met with determined opposition from Radical Republicans in Congress who wanted to punish the South and its leaders. Congress refused to seat the representatives of these readmitted states and asserted that reconstruction of the Union was properly a responsibility of the legislative branch, not of the executive. The Republican leadership sought to guarantee the civil and legal rights of African Americans and bar former Confederate leaders from voting or holding office. Congress, with no states from the former confederacy represented, passed numerous laws protecting freedmen and restricting the powers of states. Johnson vetoed the laws and Congress overrode his vetoes. Johnson's cabinet consisted mostly of Lincoln appointees, and several cabinet members, led by Secretary of War Edwin Stanton, bitterly opposed Johnson's policies.

In February 1867, Congress passed the Tenure of Office Act, prohibiting Johnson from dismissing any office holder whose appointment had required Senate approval. Johnson (and all members of his cabinet) believed the law was unconstitutional; Johnson vetoed the law, and Congress overrode his veto. In violation of the Tenure of Office Act, Johnson fired Stanton, who refused to leave. Eventually, Stanton barricaded himself in his office at the War Department, supported by armed volunteers who stood watch to be sure Stanton would not be removed by force.

Republicans in the House of Representatives hardened their stance against the president and in February 1868 passed an impeachment resolution. Johnson's trial before the Senate began the next month.

Benjamin Curtis, a former Supreme Court Justice and one of two dissenters in the infamous Dred Scott decision, led the president's defense team. They made three main arguments: First, they maintained that the language of the Tenure of Office Act was vague, leaving doubt about whether it even applied in Stanton's case, because Stanton was appointed by Lincoln, not by Johnson. Second, Curtis argued that the law was unconstitutional because it interfered with the president's ability to "take care that the law be faithfully executed." A president cannot carry out the law if he cannot trust his advisors. Third, the defense insisted that the proper way to remove a president for political misdeeds was through election, not through impeachment.

The prosecution team was led by Benjamin Butler. Their main points were that the president had clearly violated the Tenure of Office act by dismissing Stanton without consent of the Senate, and that the Constitution requires the president to faithfully execute a law duly passed by Congress, even if he believes it is unconstitutional.

More broadly, the president's accusers charged him with trying to return the "Slave Power" to the United States, violating the spirit of the Thirteenth Amendment if not its text. Johnson's defenders accused the Republicans of using the judicial procedure of impeachment as a tool to carry out partisan goals.

After a three-month trial, 35 of the 54 Senators voted to convict Johnson, but that was one vote short of the two-thirds majority necessary for conviction and removal from office. Johnson served the remaining ten months of his term, but the standoff against the Republicans continued. Johnson vetoed bills he thought were unconstitutional. Congress continued to override his vetoes, and the president's influence was crippled, but Johnson enforced the laws when passed.

Comprehension Questions:

1. What is the difference between the restoration that President Andrew Johnson advocated and the Radical Republicans' approach of reconstruction?
2. To what extent did Johnson's impeachment trial prove the effectiveness of the impeachment process as a way to preserve the separation of powers between the executive and legislative branches?
3. To what extent was the impeachment of Andrew Johnson prompted by partisan political goals as opposed to specific constitutional charges?
4. Put the following thought in your own words: James Madison: "So vague a term [as maladministration] will be equivalent to a tenure during pleasure of the Senate."

Richard Nixon

Just over a century later, another constitutional crisis arose as a result of Richard Nixon's use of executive privilege, which is the long-recognized power of the president to keep certain information secret. For a president to receive honest advice, his staff must be able to speak freely and in confidence. Beginning with George Washington, presidents had insisted on executive privilege as part of the separation of powers doctrine.

In 1968, Nixon won the presidency in a close election and his supporters immediately began planning his campaign strategy for the 1972 election. The Committee to Re-Elect the President carried out a variety of illegal activities designed to spy on the Democrats, sabotage rival candidates, and silence political criticism of Nixon. These activities included hiring burglars and paying hush money, along with various "dirty tricks" intended to discredit Nixon's critics.

In June 1972, burglars were caught in the Democratic Party headquarters in the Watergate complex in Washington, DC. Law enforcement officers suspected a connection between the burglars and the Nixon administration and investigations soon began, though White House officials denied any connection. Just before the November election, the Federal Bureau of Investigation (FBI) established that the Watergate break-in was indeed part of the political spying carried out by the Nixon campaign, but Nixon won reelection in a landslide. However, over the next few months, former members of the White House inner circle were convicted of conspiracy, burglary, and wiretapping as they attempted to cover up the administration's connection with the illegal activities. Several of Nixon's closest advisors resigned to protect the president, who denied he had known about any of the crimes until after the election. But by June 1973, former White House Counsel John Dean had told Senate investigators that Nixon personally participated in the cover-up. At this point it was Dean's word against the president's. Investigations by the courts, FBI, Senate, Department of Justice, and two different special prosecutors were conducted to learn "What did the president know and when did he know it?" Investigative reporting by Bob Woodward and Carl Bernstein of *The Washington Post* focused the nation's scrutiny on the growing storm and provided daily reports of developments in the investigations.

In the course of the congressional investigation, it was revealed that Nixon secretly recorded all conversations in the Oval Office. At this point, a tug-of-war began between the president and those charged with finding answers about what had become known as the Watergate Scandal. Investigators demanded he surrender the tape recordings of his conversations, and the president refused, countering that executive privilege protected him. He also maintained that national security matters were discussed in the recorded conversations and releasing those details would endanger the country. The House of Representatives began mobilizing for a possible impeachment while a process was devised to allow the White House staff to remove sensitive national security information. In April 1974, the White House finally released not the recorded conversations but more than 1,200 pages of heavily edited transcripts to the House Judiciary Committee. This move raised more questions than it answered and momentum built toward impeachment.

In *United States v. Nixon* in July 1974, the Supreme Court unanimously ruled that Nixon must turn over the actual recordings of certain conversations that investigators had determined were specifically related to the Watergate matter. Their ruling explained that the chief executive is entitled to great deference, especially in matters of national security and defense. However, "a generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial." The House Judiciary Committee passed the first article of impeachment, charging the president with obstruction of justice. Nixon finally released the tapes demanded by the special prosecutor. What came to be called the "smoking gun tape" demonstrated that the president had known about the burglary and actively participated in the cover-up at least since June 23, 1972, six days after the burglary.

By this time, Nixon's impeachment by the House and conviction by the Senate were a certainty, and he resigned on August 9, 1974. Therefore, Nixon avoided an impeachment trial. He could have been tried in a court of law as an ordinary citizen after he left the presidency, but within a month of the resignation, President Gerald Ford pardoned Nixon for any crimes he may have committed.

Comprehension Questions:

1. In *United States v. Nixon* 1974, the Supreme Court opinion noted that the president is entitled to great deference regarding executive privilege in matters related to national security and defense. To what extent did those matters seem to be relevant in the Watergate investigations?
2. To what extent did the constitutional systems of separation of powers and checks and balances function appropriately in the case of Richard Nixon?
3. What is the role of a free press in ensuring that no one, not even the president, is above the law?
4. To what extent was the proposed impeachment of Richard Nixon prompted by partisan political goals as opposed to specific constitutional charges?

Bill Clinton

Andrew Johnson was impeached and acquitted in 1868. Bill Clinton, elected in 1992 and reelected in 1996, was the second U.S. president to be impeached. The atmosphere in Washington, DC, in the 1990s, as in the 1860s, was one of hyperpartisanship. Clinton's political opponents eagerly searched for weapons to use against him and alleged that he and his wife Hillary had been engaged in real estate fraud through the Whitewater Development Corporation in Arkansas before he became president. Special Prosecutor Kenneth Starr investigated the Whitewater questions, but ended up recommending the president's impeachment on completely different matters.

In 1994, Paula Jones sued President Clinton for sexual harassment as a result of a 1991 encounter. The judge allowed Jones's lawyers to investigate Clinton's background for evidence that he had demonstrated a pattern of harassment. Linda Tripp, a former White House employee, contacted Jones's lawyers with information about Monica Lewinsky, an unpaid White House intern. Lewinsky had confided to Tripp about a sexual affair that Lewinsky claimed she had with the president starting in 1995. Jones's lawyers called Tripp, Lewinsky, and other women to testify in Jones's case to establish a pattern of sexual misconduct. However, Lewinsky hoped to return to work at the White House and, in 1998, signed an affidavit denying the affair about which she had previously confided to Tripp.

Tripp had secretly recorded her conversations with Lewinsky, and she turned the recordings over to Special Prosecutor Starr. Unable to prove that the Clintons had engaged in fraud in their real estate dealings, Starr turned his attention to an investigation of the president's sexual misconduct. Clinton gave his pretrial deposition for the Jones lawsuit in January 1998, stating that he had never had an affair with Lewinsky. In a press conference a few days later, Clinton again denied a sexual encounter with Lewinsky. A few months later, the judge dismissed the Jones lawsuit, ruling that Clinton's behavior had not met the legal definition of sexual harassment. (Jones later agreed to drop her appeal in exchange for \$850,000.)

Starr believed Clinton had committed perjury and obstruction of justice with respect to the Lewinsky case, so he empaneled a grand jury and continued his investigation. Finally, Lewinsky admitted to the grand jury that she had lied in denying the affair. Clinton later appeared before the same grand jury, refusing to give direct answers to questions about his relationship with Lewinsky. Then the president, in a televised address to the American people, admitted his inappropriate relationship with Lewinsky, apologizing to his family and to the American people. In his four years of investigating the president, Starr provided evidence of 11 impeachable offenses.

The House of Representatives brought two articles of impeachment, both dealing with the president's lies about his relationship with Lewinsky. The trial in the Senate began in January 1999. House prosecutors argued that Clinton was guilty of "willful, premeditated, deliberate corruption of the nation's system of justice through perjury and obstruction of justice." Clinton's lawyers responded, "The House Republicans' case ends as it began, an unsubstantiated, circumstantial case that does not meet the constitutional standard to remove the president from office." The president's job approval rating had gone up throughout September, and by January had reached 70 percent. It became clear that prosecutors would not be able to achieve a two-thirds vote to convict Clinton in the Senate, and both sides were ready to end the proceedings. Forty-five Senators voted that Clinton was guilty of perjury, and 50 found him guilty of obstruction of justice. Because prosecutors failed to achieve a two-thirds vote (67 Senators), President Clinton served out the remainder of his second term as president.

Comprehension Questions:

1. In the beginning of Kenneth Starr's investigation, what topic was he pursuing? What topic ended up prompting the House to vote for articles of impeachment?
2. Do you believe President Clinton was guilty of "high crimes or misdemeanors?"
3. Do you believe President Clinton was investigated and impeached for mostly political reasons or for mostly constitutional reasons?

Donald Trump

While Andrew Johnson was the only president to be impeached in the first 200 years of the United States, the impeachment of Donald Trump came only a few decades after the impeachment and acquittal of Bill Clinton. In September 2019, the House of Representatives began an investigation of whether President Donald Trump committed impeachable offenses during a phone call with Ukrainian president Volodymyr Zelensky. While the Democratic Speaker of the House Nancy Pelosi was initially hesitant to begin an impeachment inquiry against Republican President Trump, she deemed the interactions between President Trump and President Zelensky to be clearly improper and warranting of a new set of proceedings.

During the summer of 2019, President Trump spoke on the phone with President Zelensky. Trump asked Zelensky to investigate Democratic presidential candidate Joe Biden as well as his son Hunter Biden, who had connections with a Ukrainian gas company. President Trump also discussed U.S. economic aid to Ukraine in the same phone call. Democrats in the House of Representatives brought an article of impeachment that stated Trump abused his presidential powers by asking a foreign government to interfere in the 2020 election process by attempting to discredit his potential rival, Joe Biden. Additionally, this first impeachment article stated that Trump "sought to pressure the Government of Ukraine [to interfere in the election] by conditioning official United States Government acts of significant value to Ukraine on its public announcement of the investigations." In other words, this article charged that Trump threatened to withhold U.S. aid from Ukraine if they did not pursue the investigation of the Bidens. The House also brought a second article of impeachment against President Trump for obstruction of Congress during the phone call investigation.

President Trump argued that the charges were fabricated in an attempt by Democrats to remove him from office. Even if he implicitly threatened to withhold aid from Ukraine if it did not begin an investigation, Trump argued that such an action did not warrant removal.

In February, the Senate voted to acquit President Trump of both charges. In a 48-52 vote, senators acquitted Trump of the charge of abuse of power, and in a 47-53 vote, senators acquitted him of obstruction of Congress. Since 67 votes were required to find the president guilty, Trump remained in office. Every Democrat and the two Independents in the Senate voted for both articles of impeachment. Only one Republican voted for the abuse of power article, while joining the rest of his party to vote against the obstruction of Congress article.

Comprehension Questions:

1. What event caused the House of Representatives to begin an investigation of President Trump?
2. What were the two articles of impeachment brought against President Trump?
3. To what extent was the impeachment of Donald Trump prompted by partisan political goals as opposed to specific constitutional charges?
4. Do you believe President Trump committed “high crimes and misdemeanors”? Justify your opinion with specific evidence.

Lesson Reflection Questions:

1. Should impeachment be considered as a method of removal from office, for example, of someone who has proven to be incompetent or as a result of partisan differences, or is it strictly a method of removal for criminal activity?
2. What constitutes an impeachable offense?
3. Is impeachment a constitutional process or a criminal process?
4. What does “high crimes and misdemeanors” mean?
5. To what extent should partisanship drive the results of an impeachment trial?
6. List some parallels between the Johnson and Clinton impeachments.