

So what exactly counts as an impeachable offense?

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The U.S. Constitution's provision that federal officers are impeachable for "high crimes and misdemeanors" is notoriously unclear. That's on purpose. The framers wanted a fairly open-ended tool for removing an officer who posed a serious and immediate threat to the constitutional order. The impeachment power needed to be flexible enough to deal with circumstances that could not be easily foreseen.

Since impeachments are fundamentally [political in nature](#), concerns that are critical in criminal law — for instance, ensuring that citizens know in advance what might be punishable, or preventing judges from arbitrarily imposing sanctions — don't apply here. In the founders' judgment, members of Congress would need the authority to assess, in context, whether an individual officer needed to be removed.

This does not mean that just anything should be regarded as an impeachable offense. The framers — and following them, members of Congress — have been very reluctant to use impeachment for ordinary political disagreements. Under democratic norms, even egregious policy disagreements or errors of judgment should be corrected through routine constitutional checks and balances if at all possible. For instance, if the president were to launch military strikes that Congress thought imprudent, it has other tools to affect policy. If the president were to direct executive branch officials to perform unconstitutional actions, the courts have the power to correct them. If the president is not especially competent, the people can replace him at the next election.

What's more, just because a constitutional officer has committed an impeachable offense does not mean Congress is required to impeach. An impeachable offense is a necessary but not sufficient justification for impeaching and removing an officer. Some bad acts can be tolerated. Some call for less drastic responses than the extreme measure of impeachment, and so Congress has frequently tried other methods of reining in bad conduct before

looking into impeachment. Congress has felt a particularly heavy responsibility to pursue other options before attempting to remove an elected official.

Defendants in impeachment trials often suggest that only criminal acts are impeachable offenses. Congress has never found this very persuasive. Indeed, the search for criminal offenses can largely miss the point. The ordinary courts are the proper forum for proving and punishing criminal offenses. If the Senate convicts an officer who has been impeached, it can choose from only two penalties: removal from office and disqualification from future federal office. Impeachment solves a political problem, not a legal one; it responds to threats to the constitutional order, not the civil order.

It's true that criminal acts could be a reason to impeach. An officer imprisoned after being convicted of a crime may, obviously, have trouble performing duties, requiring impeachment and removal. Some criminal offenses might be seen as disqualifying an officer from performing public duties. The two examples mentioned in the Constitution's text — treason and bribery — are obvious breaches of public trust. Federal judges accused or convicted of corruption of various kinds may no longer give the public confidence that the courts are fair. President Bill Clinton's critics argued that presidential perjury was inconsistent with the dignity of the chief executive officer, as President Richard Nixon's critics had argued about obstruction of justice.

However, it's easy to imagine criminal offenses that do not suggest an individual could no longer effectively conduct the office's responsibilities, and so would not necessitate impeachment and removal. If, for instance, President Trump were found to have committed a criminal offense during his past business dealings or was charged with impaired driving while on a golf weekend in Florida, it seems unlikely that an impeachment would be a necessary or useful response.

At the same time, actions that are not criminal might be impeachable. An officer who escaped prosecution or conviction on criminal charges of bribery might have forfeited the public trust — and be subject to impeachment.

Even actions that might never be crimes could be impeachable. The very first impeachment charged that [Judge John Pickering](#) “did appear upon the bench of said court, for the purpose of administering justice, in a state of total intoxication” and did from the bench “in a most profane and indecent manner, invoke the name of the Supreme Being, to the evil example of all the good citizens of the United States.” Judge West Humphreys was impeached in 1862 for abandoning his judicial duties in district in

Tennessee and joining the Confederacy. The articles of impeachment laid against him also included giving a public speech in favor of secession and unlawfully acting as a judge for the Confederacy. In 1933, Judge Halsted Ritter's impeachment included the charge that he had continued to practice law in a manner "calculated to bring his office into disrepute," violating judicial ethics. Associate Justice Samuel Chase was charged with abusive behavior from the bench, and President Andrew Johnson was charged with firing the Secretary of War in a manner inconsistent with a federal statute.

[Many impeachment efforts](#) have been prompted by behavior seen as inconsistent with the responsibility and reputation of the office. Some individuals are impeached to get them out of office, when their actions threaten the political system's functioning, and they can't be stopped any other way.

Impeachments also serve a broader function. Congress can use it to reinforce or create new political norms. Even when the impeached official is not convicted and removed from office, the impeachment itself sends others the message that those actions were unacceptable and must not be repeated. When a federal official is destabilizing established norms of conduct, Congress may impeach to send a strong signal that such behavior must not become the new normal.

Even lawful actions, or actions within an officer's authority, can be impeachable offenses. Context is everything. Actions that are ordinary and inoffensive in some circumstances can be extraordinary and threatening in others. Impeachment is not merely for illegal or constitutional actions. It is also a remedy for dereliction of duty and abuse of power.

Evaluating those circumstances and assessing the meaning of actions requires political judgment. That's why legislatures, not judges, are entrusted with impeaching. The people's representatives in Congress are the ones who must make the case, to their colleagues and to the people themselves, that an officer's actions are so far beyond the pale and so threatening that impeachment is the only proper response.

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