

Since Constitution was ratified

Impeachment has been used only 12 times

By MICHAEL BENEDICT
Special to Newsday

(The writer is a professor at Ohio State University and author of a book about the impeachment of President Andrew Johnson.)

As scandals whirl about the Nixon administration, Americans for the first time in more than 100 years are beginning to consider the possibility of impeaching a U.S. President. But does anybody know what impeachment means? Not many people do. Even Congressmen have found that they hardly know the meaning or what the procedure is all about.

In England, where it originated, impeachment amounted to an alternative method of accusing men of wrongdoing. It was used primarily when the traditional procedure, indictment, was impractical because of the nature of the misconduct, the intimidating power of the wrongdoer, or because he held an official position in the government.

Indictments were presented by a panel of respectable men of the local community (the forerunner of the modern grand jury) and tried before a judge and jury according to common law. Impeachments were presented by the lower branch of Parliament, the House of Commons, and tried before the House of Lords according to parliamentary law.

So the term "impeachment" refers to a mode of accusation and trial, not to the decision itself: one might be impeached and still escape conviction, as did Andrew Johnson, our 17th President.

If found guilty by the House of Lords, a defendant was liable to the same kind of punishment as might be inflicted after conviction through ordinary criminal process — even death.

By the 17th century, Parliament used impeachment primarily as a political weapon in its incessant battles against the King and his ministers. Royal advisers sometimes were put to death in essentially political squabbles.

When American post-Revolutionary leaders framed our Constitution, they refined impeachment into a method for removing "the President, Vice President, and all civil officers of the United States . . . for . . . treason, bribery, or other high crimes and misdemeanors."

As in England the lower branch of Congress, the House of Representatives, must present the impeachment, and the upper house, the Senate, must then weigh the evidence and deliver a verdict. But punishment extends only to removal from

office and disqualification from future government service. The framers of the Constitution wanted no political executions here.

Once a motion to impeach is made, all other business before the House ceases. The House Judiciary Committee or a special committee usually will investigate the charges and decide if the alleged misconduct warrants impeachment. Whether the committee favors or opposes impeachment in its report, the House must vote on the question.

If a majority of the representatives votes in favor, then a committee is appointed to frame the charges, the Articles of Impeachment, in appropriate language. Often these same representatives will act as the prosecutors during the trial before the Senate. They are called the managers of impeachment. But the House could appoint others to manage the impeachment.

The Senate must promulgate the rules under which it will hear the case and invite the defendant to send counsel to hear the charges and prepare a defense against them. During the trial, the Senate generally becomes a quasi-judicial body. They are no longer performing the traditional legislative functions.

If the impeachment is of the President, the Chief Justice of the U.S. Supreme Court presides over the trial. Finally, after hearing testimony and arguments from both sides, the Senate must vote on the articles, a two-thirds majority being required to convict the defendant on any article.

Since the ratification of the Constitution, there have been only 12 impeachments in Congress — nine of the defendants were judges, one a cabinet officer, one a Senator and one a President. Only four of the resulting trials, all of judges, wound up in conviction and removal. The best-known impeachments all involved to some degree the most controversial facets of the proceeding — what constitutes an impeachable offense, and the closely related question of the role of partisan politics in the trial.

That the process might be abused for political purposes has been pointed out not only by defense lawyers in those trials, but also by some reasonably impartial observers. Both have urged limiting the range of offenses for which government officers might be impeached. The procedure may be invoked, they insist, only when an officeholder is accused of a crime.

At the other extreme are those observers who claim that Congress alone determines whether conduct is impeachable — in

other words, that impeachment is basically a political proceeding, and that Congress may impeach whomever and whenever it wishes.

This was the position taken by a few of the managers of the impeachment of President Andrew Johnson in 1868; Gerald Ford, Republican minority leader in the House of Representatives, came close to this view in his efforts to impeach Supreme Court Justice William Douglas in 1970, and former Attorney General Richard Kleindienst expressly propounded it in testimony before Congress several weeks ago.

The issue was argued extensively in the second impeachment proceeding in Congress. In 1803 the Jeffersonian Republican-dominated House of Representatives impeached Federalist Judge John Pickering for alcoholism and profanity on the bench.

The judge's defenders accused Congress of partisanship in presenting and trying the impeachment and argued that the charges did not constitute an impeachable offense, especially since the judge's son insisted that his father was insane and could not be held responsible for his actions. Nonetheless, the managers of the impeachment got the two-thirds majority in the Senate necessary for conviction and removal.

In the 1805 impeachment and trial of another Federalist judge, Supreme Court Justice Samuel Chase, the problem became even plainer. Chase had indulged in gross improprieties in his judicial capacity, using his position to persecute his Republican political opponents. But his actions did not constitute indictable crimes. The entire case was shot through with partisan politics, the offenses themselves arising from Chase's own political passions.

Federalists contended (and many historians have agreed) that Chase's impeachment was merely a prelude to a wholesale purge of Federalist judges by the Republican Congress, and that if Chase had been convicted, Chief Justice John Marshall would have been the next to go.

While the anti-Chase forces convinced a majority of Senators to vote for his removal, the number fell short of the two-thirds needed. Ever since, the Chase impeachment has been cited as a precedent both by those who argue for a narrow interpretation of impeachable offenses and those who insist on a broad interpretation.

In 1868 the House of Representatives presented the only impeachment of a President. Again partisanship and the

nature of impeachable offenses were key issues. So-called "radical Republicans" for more than a year tried to persuade more moderate Republican colleagues that President Johnson had rendered himself impeachable by his single-minded pursuit of a quick restoration of the Union after the Civil War. They accused him of constant interference with some Congressional laws refusal to enforce others, and abuse of powers clearly his under the Constitution.

But despite this pressure, Republicans refused to pass the required resolution until Johnson apparently violated an actual statute. Once again the inevitable charges of partisanship rang forth, but Republicans divided and the managers failed by one vote to win a conviction.

Since the failure of the attempt to remove Johnson there have been six more impeachments, five of judges, and nearly all raised the same problems and controversies, although none is very well-known. In each case the charges included nonindictable conduct, and in two of them the House managers won convictions.

According to both the broad and middle-ground interpretations of the impeachment power, then, Richard Nixon probably was impeachable even before the Watergate scandal. His refusal to spend Congressionally appropriated funds, his dismantling of the Office of Economic Opportunity without Congressional authorization, his prosecution of the war in Indochina without Congressional sanction, his substitution of "executive agreements" for treaties, which require Senate ratification, his creation of new positions in the executive branch without supporting legislation from Congress, and his refusal to send the names of the men whom he appointed to those positions to the Senate for confirmation all might be cited as violations of his oath "to preserve, protect, and defend the Constitution of the United States."

Yet under more restrictive interpretations of what constitutes impeachable offenses, interpretations certain to be cited on the President's behalf in the event an impeachment movement develops, such "political" offenses would not justify impeachment.

That is the importance of the Watergate scandal, for if evidence emerges that the President knew of the illegal activities beforehand, or that he was aware of efforts to cover them up afterward, then he could stand charged with an indictable offense, an offense for which all agree impeachment is the appropriate remedy, no matter how they feel about its practicality

Senators make tidy sums speaking for citizens

By SPENCER RICH
(C) 1973, The Washington Post

WASHINGTON — U.S. Senators earned \$590,217 last year for articles and speeches delivered to trade groups, labor unions, lobbying associations, college students and religious groups, according to reports filed this week with the secretary of the Senate.

The \$590,217 in fees and honorariums represents a hefty extra source of income for senators over and above their salaries of \$42,500 each a year.

Sen. Bob Dole (R-Kan.), who was GOP national chairman during 1972, earned the most for speechmaking. He collected \$33,050 for addressing such groups as the National Farmers Organization (\$500 fee), National Association of Home Builders (\$1,000 fee), the Gypsum Drywall Contractors (\$2,500) and Tulane University (\$5,000).

Hubert Humphrey (D-Minn.), a perennial leader in the speaking circuit, ranked second in 1972 with earnings of \$29,135. A big portion came in \$5,000 fees received from the Trade Policy Research Center and Golden Industries. In 1971, Humphrey led all other Senators with \$83,451, but his earnings dropped off sharply last year.

Birch Bayh (D-Ind.), with \$26,500, ranked third in 1972; about a third of his speaking fees came from the National Council of Jewish Women, United Jewish Appeal, and various other Jewish organizations. Charitable organizations frequently use glamorous political figures as a speaker at fund-raising dinners. Many other Senators in addition to Bayh listed large fees from Jewish and other denominational organizations.

Bottling a sacred Brazilian drink and selling an exotic red un-cola

By LEONARD GREENWOOD
(C) 1973, The Los Angeles Times

RIO DE JANEIRO — According to legend, the Maues Indians of Brazil's Amazon had a 6-year-old god child who made sick people well, brought joy to the sad and gave wilted plants new life. Strangely, Fresno, Calif., may be interested in that bit of mythology.

The devil Jurupary, envious of the little god's power and popularity, disguised himself as a serpent and killed him, according to the Maues. But the god child's miraculous powers survived his death.

From the grave where the Maues Indians buried him there began to grow a sacred tree with a small bright red fruit. From this hard fruit, the Indians ground a powder and mixed it with water, producing a drink that refreshed and brought health and strength.

And now entrepreneurs are bringing it, bottled, to California. Modern science gives the name "paulinia sorbilis sapindacea" to the tree. Early last century, when the first Western scientists began penetrating the Amazon forest, they tested guarana (pronounced gwah-rah-nah, accent on the

final syllable) and found it to be a mild stimulant and an excellent digestive aid.

This month, Californians will get an opportunity to test the powers of the drink when a Brazilian firm, acting through a new company it has set up in the United States, starts test marketing in Fresno.

If all goes well — and market research indicates that it will — the drink will go on sale in Los Angeles in October as the first step in the nationwide campaign.

The invasion of the American market is being planned by Companhia Alterosa de Cervejas, a brewery and soft-drinks manufacturer. The company — one of more than 200 which produces guarana in Brazil — sells under the brand name Trop, and this is the name it will use in California.

Fresno will be the second practical market sampling. Nine months ago the firm put limited supplies into shops in Colorado and was impressed with the sales.

Alterosa will continue to make the syrup concentrate in Brazil and send it to the U.S.

"We think Americans are ready for a new flavor, in addition to the old traditional favorites," an Alterosa official said. "They want something exotic, and this is it."