

Politicizing Presidential Impeachment in the Contemporary World

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Abstract: The role and importance of the president is growing in contemporary society; therefore, more is demanded of him. A request for the responsibility of the president in the form of impeachment has appeared in society. Usually impeachment is mainly considered a legal procedure with purely legal causes - the commission of a crime or a serious offense. However, in many countries today, we can observe the politicization of impeachment. This article deals with the problem of the politicization of impeachment, which is poorly addressed in scientific literature. The author provides arguments in defense of this thesis: the politicization of articles of impeachment and their broader interpretation, which allows finding the corpus delicti in almost any action of the president; politicization of the impeachment procedure; and the dependence of the beginning, course and outcome of impeachment on the alignment of party forces. The author concludes that modern impeachment is actually a vote of no confidence in the legal shell: legal aspects of impeachment are replaced by political ones. In this regard, the issue of simplifying the impeachment procedure and turning it into the routine way of terminating presidential powers is relevant.

Keywords: Impeachment, president, politicizing, political responsibility, president's resignation.

1. INTRODUCTION

The problem of responsibility of the president is extremely relevant. The president is a leading actor on the political stage even when he performs more ceremonial functions. The president is a significant political subject whose decisions and actions influence a country's political direction. The world is rapidly developing, therefore, the role of the president is growing significantly, and society has great hopes for him. So too is the role of the individual in politics growing. Personalization of power is taking place, and, as the American historian Schlesinger Jr. (1992) rightly noted, "imperial presidency" has appeared. Hence, a public request exists for various forms of presidential responsibility in the form of impeachment, which requires deep scientific reflection and unbiased assessments.

In what direction is the institution of presidential impeachment developing today? What are the main trends in its evolution over the past decades? What is the near and distant future of the institute of presidential impeachment? Answers to these questions are important in both political science and practice.

2. METHODS

First of all, we should study impeachment processes through the analysis of constitutions and legal acts containing their formal rules. After that we are analyzing *de facto* situations of causes: the beginning, course, and outcome of impeachment. To

determine impeachment trends, we can turn to cases of countries where presidents have been impeached, been on trial for impeachment, or resigned. The US provides a wide range of empirical material, particularly in the impeachment inquiry against Donald Trump. Additional empirical evidence from the political practice of Austria, Brazil, Iceland, Lithuania, South Africa, and Ukraine is used in this article. Legal analysis and case study, which helps to make common conclusions, are two key methods of our study.

3. RESULTS AND DISCUSSION

As correctly noted in the literature, there is very little scholarly literature comparing impeachment regimes, however, especially literature that discusses both the legal and the political factors that shape how impeachment regimes function (Ohnesorge 2019). Political aspects of presidential impeachment in different countries has been studied by several authors. Among the most important books in theoretical and methodological terms are the works of Baumgartner and Kada (2003), Pérez-Liñán (2007) and recently published book by Fagbadebo (2020). All of these contributors examine not only various cases of successful and non-successful impeachment, but also the broad framework of analysis of impeachment with the focus on general conclusions about this process and common features that exist in all countries. One of the most important results of these studies is that, contrary to widespread opinion, impeachment is not a strictly legal procedure, but rather one that is highly political.

Over the past 30 years, there has been an increase in the number of impeachments in the world; 11

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successful cases of impeachment that ended with the forced resignation of the president took place in Latin America (Brazil, Venezuela, Ecuador, etc.), Asia (the Philippines, Indonesia, South Korea), and Lithuania. In three other cases in Pakistan, Peru, and Ukraine, the president had to leave his post during the impeachment process. To this number, 18 "false start" cases must be added where an impeachment did not end with the resignation of the president (either it was interrupted or the parliamentary vote was in favor of the president).

As aptly noted in the literature, impeachment has ceased to be an extraordinary event or "political earthquake" (Baumgartner and Kada 2003: 1). In a number of countries, mainly in Latin America, the practice is seen as a form of presidential responsibility based mainly on political considerations. Thus, impeachment, which was conceived as an exceptional procedure to be used in rare cases, is becoming a routine way to remove a president.

Unlike the prime minister, the president is conceived as a constant in the political process who cannot be removed for political reasons, as the head of government and cabinet are relatively easy to move in parliamentary systems. Therefore, strict rules are established for the removal of the head of state from office. The complexity of the removal process is due to "the desire to exclude any possibility of political persecution" (Statkevičius 2004b: 46).

The impossibility to dismiss the president is seen as one of the perils of presidentialism. As Linz (1990: 52) proved, it is almost impossible to remove the president who has lost legitimacy from his post. Moreover, the prime minister's resignation does not mean a crisis for the entire regime. The prime minister can increase the legitimacy of his political course by initiating a voting procedure for a vote of confidence in parliament or by inducing the procedure of early parliamentary elections (Zaznaev and Sidorov 2018). The president does not have such opportunities. The absence of political mechanisms for the forced resignation of the president leads to the fact that the opposition in desperation, commit violations of the law, which leads to legal chaos and, ultimately, a serious political crisis. For example, at the peak of the confrontation between President Viktor Yanukovich and his opposition on February 22, 2014, the Verkhovna Rada of Ukraine adopted a decree stating that the president had "removed himself from the exercise of constitutional powers" and "was not fulfilling his duties" (Zaznaev and Sidorov 2018).

Although there is no consensus in the literature as to whether impeachment is a legal or political process, it still seems more convincing to consider it a predominantly legal procedure (in which the court takes part) with purely legal grounds - the commission of a crime or serious misconduct (offense). "The grounds for impeachment should be interpreted legally and not politically, since only in the first case is *ex lege* impeachment ensured," writes Statkevičius (2004b: 47). He correctly emphasizes that "in modern constitutions there is a tendency to make the grounds for impeachment clearer and more accurate. Obviously, this is due to the desire to establish specific offenses in connection [to] the question of constitutional responsibility" (Statkevičius 2004b: 45).

Today, impeachment has become a tool for the militant legislature to 'sort out' the president with whom the legislature is at odds (Pérez-Linán 2007: 3). Enshrining the article of the Constitution on impeachment, its creators initially saw maladministration as grounds for impeachment instead of misdemeanor (Statkevičius 2004a:196). In fact, more than two centuries later, presidents are removed from power through impeachment in connection with an unsatisfactory assessment of their activities, or "bad governance."

Politicization of impeachment of the president is manifested in several aspects.

1. There is a politicization of articles of impeachment and their broader interpretation, which allows the corpus delicti to be found in almost any presidential action. A case in point is Brazilian President Dilma Rousseff, who was charged with two offences:

- a. an increase in the state budget (the government approved an additional loan in order to reduce the deficit) without the consent of Congress;

- b. the government's delay in paying the Central Bank of Brazil \$996 million for an agricultural lending program (the Central Bank paid this money to agricultural producers from its own resources, and the government then returned it).

Both points of accusation fell in Brazil under the "crime in the financial sector" (Okuneva 2016a: 31). At the same time, the opinions of Brazilian lawyers were divided: some saw Rousseff's actions as a crime while others categorically refused to recognize the criminality of government policy. According to Rousseff

advocates, what is considered “financial policy” in other countries is “a crime” in Brazil. It is significant that the president said: “I have not stolen a single centavo, I have not gone through a single corruption case, I have not been noticed for illegal enrichment” (Okuneva 2016b: 9).

2. There is a politicization of the impeachment procedure itself. An inflated scandal involving the media and mass street protests is an impetus for the beginning of the impeachment procedure.

Impeachment is a competitive procedure between political opponents. For example, from the very beginning, the accusations of the Democrats against US President Donald Trump for the case of impeachment were dubious. Democrats wanted to “overthrow” the president at all costs. Moreover, the same actions of Trump were interpreted by the parties in different ways. Democrats claimed that the president violated the law and exceeded his authority by exerting pressure on the president of Ukraine through blackmail. On the contrary, the Republicans stated that Trump supported the rule of law by demanding it be respected in Ukraine in a conversation with Volodymyr Zelensky.

During the hearings in November 2019 at the US House Permanent Select Committee on Intelligence Fiona Hill, the former advisor to the President of the United States for Russia and Eurasia and David Holmes, the Head of Political Affairs for the US in the US Embassy in Ukraine were interviewed as witnesses. For an hour, both witnesses and the chairman actively discussed Russia's interference in American affairs. The general leitmotif of their conversation was: “Hostile to the United States, Russia is a country which intervened in the 2016 American elections and will intervene further.” It is clear that this procedure has nothing to do with a legal investigation.

3. The beginning, course and outcome of impeachment depends on the alignment of party forces. Alexander Hamilton warned about this even at the dawn of the existence of the United States: the process of impeachment “will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused,” and as a result “there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt” (Federalist Papers 2000: 430).

As a rule, impeachment is initiated by the opposition party: for example, most Democrats in the US House of Representatives began the process of Trump's impeachment. The “passing” of impeachment through the legislature depends on the positions of the parties (presidential and anti-presidential). In the case of the Brazilian president Rousseff, the Workers' Party (PT), who previously supported Rousseff, turned away from her during the impeachment, which ultimately led to her removal from office (Okuneva 2016a: 35).

The final decision, voting in the upper chamber of parliament directly depends on the alignment of political forces. Examples of all three US impeachments prove this. There were not enough votes in the Senate to decide on the resignation of Presidents Andrew Johnson and Bill Clinton (Busby 2001:165). In the Senate, all Democrats voted for Trump's impeachment against all Republicans but one - Mitt Romney voted to convict the president of abuse of power.

4. Criminal prosecution does not always follow the removal of the president as a result of impeachment. For example, the first successful impeachment in Europe took place in Lithuania in 2003-2004. President Rolandas Paksas had been impeached on all three charges against him: the unconstitutional granting of citizenship to Russian national Yuri Borisov, leaking secret information, and using his office to unfairly influence the directors and shareholders of *Žemaitijos Keliai* (Palubinskas 2005). The president was removed from office. However, the District Court of Vilnius did not find Paksas guilty of disclosing state secrets. This decision was annulled in 2005 by the Court of Appeals of the Republic of Lithuania, the nation's second highest court, on the basis that the District Court did not link separate parts of the evidence. The higher court concluded that Paksas committed a criminal act, but it terminated the criminal action and did not impose a penalty. The Court indicated that the actions of the dismissed President no longer caused any danger since he was out of public service (Law Library of Congress 2005).

Of course, the majority of presidents in the world who were impeached had a finger in the pie: they really committed serious crimes (as a rule, they were accused of corruption), which was established by the court. Therefore, it would be a simplification to assert

that law is completely replaced by politics. Cases of impeachment are different, but the tendency for the political to prevail over the legal is clearly visible.

The widespread use of impeachment actualizes the idea of removing the president for political reasons. In their constitutions, a number of countries offer an alternative to the legal rigidity of impeachment. Such institutions include a vote of no confidence in the president by the parliament and popular recall carried out by referendum. For example, in South Africa, there is a constitutional and political practice of applying a vote of no confidence to the president. It is possible to remove the president for political reasons if the parliament achieves a majority of votes (although the constitution separately prescribes rules for impeachment of the president). This is not a "dead" institution: deputies of the "Democratic Alliance" in parliament initiated a vote on a vote of no confidence in President Jacob Zuma seven times in 2015-2017 to no avail. However, it was not possible to achieve opposition to the president's resignation using the vote of no confidence: Zuma "voluntarily" resigned under pressure from his party (Nochevka 2018).

In addition to a vote of no confidence, a number of countries, including Austria and Iceland, use a parliamentary-plebiscite method of removing the head of state. By decision of the parliament, the question of removing the president from power is put to a referendum. In 2008, in the midst of a financial crisis, the media debated the issue of the removal of the Icelandic president, but the procedure was not started. There is only one "successful" case of a popular recall of the president: a referendum was held in Azerbaijan in 1993 in which 97.5% of voters expressed no confidence in President Abulfaz Elchibey.

As we can see, a vote of no confidence in the president is ineffective and a referendum is not applicable; that is, neither institution works properly or ensures the responsibility of the president. The desire for impeachment as the only way to remove the president against his will hence appears.

4. SUMMARY

Today, the actions of a number of presidents in the world cause public discontent, which raises the question of their political responsibility. As countries lack effective tools to remove presidents, impeachment attempts are being made. A society seeks to apply mechanisms to remove the president from power on

political, moral, and legal grounds. The premature removal of the president for political reasons is becoming more common.

5. CONCLUSIONS

Contemporary impeachment is evidently a vote of no confidence in the legal shell. Impeachment is being politicized and the legal aspects of impeachment are being replaced by political ones. In this regard, the question arises of how to simplify the impeachment procedure and turn it into the usual way to terminate presidential powers (e.g., the vote of no confidence in South Africa and a popular recall of the presidents in Austria and Iceland). Thus, public and scientific discussions about presidential impeachments are ahead of us.

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